

In the Matter of LAMM LUMBER COMPANY and LUMBER AND SAWMILL  
WORKERS UNION, A. F. L.

*Case No. 19-R-1320.—Decided June 13, 1944*

*Mr. R. B. Maxwell*, of Klamath Falls, Oreg., for the Company.

*Messrs. W. Yeoman and Donald Gilman*, of Klamath Falls, Oreg.,  
for the A. F. L.

*Mr. George Brown*, of Portland, Oreg., and *Mr. Vernon N. Chase*,  
of Klamath Falls, Oreg., for the C. I. O.

*Mrs. Catherine W. Goldman*, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Lumber and Sawmill Workers Union, A. F. L., herein called the A. F. L., alleging that a question affecting commerce had arisen concerning the representation of employees of Lamm Lumber Company, Modoc Point, Oregon, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Maurice M. Miller, Trial Examiner. Said hearing was held at Klamath Falls, Oregon, on April 20, 1944. At the hearing International Woodworkers of America, Local 6-12, affiliated with the Congress of Industrial Organizations, herein called the C. I. O. moved to intervene; and the motion was granted. The Company, the A. F. L., and the C. I. O., appeared and participated. The C. I. O. moved that the petition be dismissed because of a contract between it and the Company. For reasons hereinafter stated, the motion is hereby denied. 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

Lamm Lumber Company, an Oregon corporation, is engaged in the manufacture and sale of lumber. It operates a logging camp at Chinchalo, Oregon, from which it secures its entire supply of timber, and maintains a lumber mill at Modoc Point, Oregon where it manufactures yard stock, factory stock, lath, molding, and box shook. Only the Modoc Point operations are involved in this proceeding. During the year 1943 the Company logged and processed approximately 45,000,000 feet of lumber. A small percentage of the Company's output is sold directly to war agencies of the United States Government but approximately the entire production goes indirectly into interstate commerce and into the war effort.

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

#### II. THE ORGANIZATIONS INVOLVED

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

International Woodworkers of America, Local 6-12, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

#### III. THE QUESTION CONCERNING REPRESENTATION

On March 15, 1943, the Company and the C. I. O. entered into an exclusive bargaining contract, to be effective until April 1, 1944,<sup>1</sup> and to be automatically renewable in the absence of notice 60 days prior to that date, of a desire to change the contract. On January 24, 1944, the C. I. O., in accordance with the terms of the contract, notified the Company that it desired revisions and amendments to the contract. Thereafter, however, no negotiations were held between the parties as provided for in the contract.<sup>2</sup> On March 28, 1944, the A. L. F. filed its petition in this proceeding.

<sup>1</sup> The printed copy of the contract, introduced into evidence, gives the termination date as April 1, 1943. It appears from the context of the record, however, that 1944 was the date intended by the parties.

<sup>2</sup> Section (2), Article XIII, of the contract reads as follows:

If such notice of desired changes in this agreement, as above provided, is given by either party to the other, negotiations with respect to such changes shall be held commencing not less than thirty (30) days prior to expiration. If these negotiations do not result in agreement by the expiration date, this agreement shall at the expiration date become null and void, unless the parties at that time mutually agree to continue negotiations. If they do so agree, then this agreement shall continue in full force and effect until such negotiations are broken off by either party or an agreement is reached.

The C. I. O. contends that the petition of the A. F. L. was not timely, since it was filed subsequent to commencement of the 60-day automatic renewal period provided for in the contract. The contention of the C. I. O. would have merit if the contract had, in fact, been permitted to renew itself automatically.<sup>3</sup> However, we are of the opinion, as contended by the Company, that the contract was not automatically renewed, but that according to its terms, it had terminated on April 1, 1944, since no new agreement was reached following notice by the C. I. O. that it desired to negotiate changes in the existing contract. Assuming, as the C. I. O. further contends, that a reasonable interpretation of the contract makes it mandatory upon the parties to meet in negotiations before the contract can become null and void because of a failure to reach an agreement, and that it meanwhile continues in effect, the contract would have now become one of indefinite duration, and, as such, could not operate to bar the instant proceeding.<sup>4</sup> Accordingly, we find that the contract does not preclude a present determination of representatives.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the A. F. L. represents a substantial number of employees in the unit hereinafter found appropriate.<sup>5</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 parties are generally agreed that the appropriate unit should cover all production and maintenance employees of the Company at its Modoc Point plant, including the bull cook, the cook,<sup>6</sup> waitresses, and watchmen,<sup>7</sup> but excluding clerical and supervisory employees. They are in disagreement, however, concerning certain store employees.

The Company operates a general merchandising store, at which it employs a manager and two clerks. The parties are agreed and we find that the manager should be excluded from the unit. The Company and the C. I. O. contend that the clerks should also be excluded, but the A. F. L. contends they should be included. It does not appear that the clerks are engaged in functions other than those usually per-

<sup>3</sup> See *Matter of Mill B., Inc.*, 40 N. L. R. B. 346.

<sup>4</sup> See *Matter of Phelps Dodge Refrining Corporation*, 40 N. L. R. B. 1159; *Matter of Allegheny Ludlum Steel Corporation*, 40 N. L. R. B. 1285

<sup>5</sup> The Field Examiner reported that the A. F. L. submitted a petition bearing signatures of 58 persons, all of which appeared genuine; that the names of 49 persons appearing on the petition were listed on the Company's pay roll of March 31, 1944; that the signatures were dated March and April 1944, and that there are 166 employees in the unit.

The C. I. O. relies upon its contract to establish its interest in the proceeding.

<sup>6</sup> Upon the basis of an understanding that the cook had no authority to effect changes in the status of employees or to make effective recommendations in that regard, the parties agreed to his inclusion.

<sup>7</sup> The watchmen are neither armed nor militarized.

formed by such employees. We are of the opinion that their interests differ from those of the production and maintenance employees, and accordingly, we shall exclude the clerks from the unit.<sup>8</sup>

We find that all production and maintenance employees of the Company at its Modoc Point plant, including the bull cook, cook, waitresses, and watchmen, but excluding store employees, 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, 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 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 3, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Lamm Lumber Company, Modoc Point, 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 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

<sup>8</sup> See *Matter of Potlatch Forests, Inc.*, 55 N. L. R. B. 255.

and have not been rehired or reinstated prior to the date of the election, to determine whether they desire to be represented by Lumber and Sawmill Workers Union, affiliated with the American Federation of Labor, or by International Woodworkers of America, Local 6-12, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining, or by neither.