

In the Matter of VULCAN CORPORATION *and* INTERNATIONAL WOOD-
WORKERS OF AMERICA, C. I. O.

Case No. 18-R-1087.—Decided October 5, 1944

Mr. James R. Durfee, of Antigo, Wis., for the Company.

Mr. Edward J. Lambert, of Wausau, Wis., and *Mr. John Braaten*,
of Goodman, Wis., for the CIO.

Mr. Paul Bisgyer, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Woodworkers of America, C. I. O., herein called the CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of Vulcan Corporation, Antigo, Wisconsin, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Clarence A. Meter, Trial Examiner. Said hearing was held at Antigo, Wisconsin, on August 25, 1944. The Company and the CIO appeared and participated.¹ 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

Vulcan Corporation is an Ohio corporation with its principal office and place of business at Portsmouth, Ohio. It operates plants in Ohio, Wisconsin, Illinois, New York, Massachusetts, Michigan, and Missouri. At its plant at Antigo, Wisconsin, with which we are solely

¹ Although duly served with Notice of Hearing, United Brotherhood of Carpenters and Joiners of America, Local #3043, A. F. of L., herein called the AFL, failed to appear.

concerned in this proceeding, the Company is engaged in the manufacture of dimension hardwood stock, shoe lasts, and woodwork for instrument panels. During 1943 the Company purchased for its Antigo plant raw materials amounting in value to approximately \$500,000, of which about 90 percent was shipped from outside the State of Wisconsin. During the same period, the Company sold products finished at its Antigo plant valued at approximately \$1,300,000, at least 90 percent of which was shipped to points outside the State of Wisconsin.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

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

III. THE QUESTION CONCERNING REPRESENTATION

On August 9, 1944, the CIO requested recognition as the bargaining representative of the Company's production and maintenance employees. The Company, doubtful of its obligations under a purportedly unexpired contract with the AFL, refused to recognize the CIO until it was certified by the Board. While it does not now affirmatively urge that the contract precludes this proceeding, it, nevertheless, desires that the Board determine the contract's effectiveness as a bar.

On September 1, 1942, the Company and AFL entered into a written agreement expiring on August 31, 1943, which covered the Company's employees, exclusive of clerical and supervisory personnel. The agreement provided for automatic renewal for yearly terms in the event neither party gave written notice of termination at least 60 days prior to any anniversary date. No such notice having been given, the agreement, in the absence of the special circumstances present in this case, would have been last extended for 1 year to August 31, 1945.

The uncontroverted evidence demonstrates that, long before the most recent renewal date of the contract, the AFL ceased to be a functioning organization and bargaining representative of the Company's employees. For more than a year, it had no bargaining conferences with the Company, and for the past 6 or 8 months, its shop committee failed to consult with the Company regarding grievances and other related matters, although the contract contemplated such meetings at least every 2 weeks. Significantly, the Company, several months prior to this proceeding, made unilateral applications to the War La-

bor Board for wage increases and increased vacation privileges for its employees. The record also shows that, since February or March 1943, the AFL held no membership meetings; that, some time ago, the AFL signatories to the contract and its last set of officers, with the possible exception of the treasurer who is now in the armed forces, left the Company's employ; and that no successors to these officers were elected. Moreover, the last president and secretary of the AFL testified that, to their knowledge, the AFL was defunct and without membership. Finally, the AFL failed to appear at and participate in the hearing in the instant proceeding, although duly served with notice thereof.

Thus, the foregoing facts clearly sustain the view that, prior to the date when the contract between the AFL and the Company purportedly renewed itself in 1944, the AFL was, for all intents and purposes, non-existent. Under such circumstances, to accord vitality to the contract would be tantamount to foreclosing the Company's employees, now unrepresented, from exercising the right to select a collective bargaining agent. Accordingly, we conclude that the contract is no bar to this proceeding.²

A statement of a Board Field Examiner, introduced into evidence at the hearing, indicates that the CIO represents a substantial number of employees in the unit hereinafter found appropriate.³

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 stipulated to the appropriateness of a unit consisting of all the Company's production and maintenance employees at its Antigo, Wisconsin, plant, including the overseer in the green lumber yard, the kiln operator,⁴ and watchmen,⁵ but excluding office and clerical employees, the dimension mill and dry kiln superintendent, the saw-mill superintendent, the timber superintendent, and the dimension mill foreman. However, there is disagreement with respect to the blockmill supervisor, the log scaler, and the timber cruiser and log buyer, all of whom the CIO would exclude as supervisory employees, whereas the Company would include them. It appears from the record that these employees, concerning whom there is dispute, voted in an election held in 1940, pursuant to a consent agreement, in which

² *Matter of Wilson Packing and Rubber Company*, 51-N. L. R. B. 910

³ The Field Examiner reported that the CIO submitted 51 authorization cards bearing the names of persons listed on the Company's pay roll of August 14, 1944, which contained the names of 152 employees in the appropriate unit.

⁴ The overseer in the green lumber yard and the kiln operator clearly are not supervisory employees within the meaning of our customary definition.

⁵ They appear to be neither armed, militarized, nor deputized.

election the CIO was defeated. It also appears that they were included in the AFL contract hereinabove mentioned. We shall now consider them separately.

*Blockmill supervisor:*⁶ He is under the saw-mill superintendent and directs the work of 11 or 12 men in the blockmill. Approximately 10 percent of his time is spent in this capacity, while the remainder of his time is devoted to checking sizes of manufactured items, setting up and repairing lathes, making patterns for block lathes, and performing the work of absent employees in the blockmill. He does not possess authority to hire, discharge or otherwise affect the status of employees.⁷ While he is paid on a weekly basis and the men whom he directs receive an hourly rate, we are not persuaded that he comes within our usual definition of supervisory employees and we shall include him.

*Log scaler:*⁸ He either works alone or directs a crew varying in size up to eight men. His job requires him to see that logs are properly decked, unloaded, and sorted. He selects particular logs for prescribed uses in the plant and directs his men where to place them. He, too, performs manual labor. The log scaler does not possess authority to hire or discharge or otherwise affect the status of employees, or effectively to recommend such action. Although he is paid a weekly salary, while the men working with him are paid an hourly rate, it is our opinion that he is a non-supervisory employee and we shall include him.

*Timber cruiser and log buyer:*⁹ His duties require him to spend about 75 percent of his time away from the plant. He buys up logs and timber at prices set by the Company and "cruises timber." In the performance of these duties, he is frequently accompanied by his "partner," the timber superintendent. When he is at the plant he works as a log scaler. He is paid a weekly salary. It also appears that, at the time of the hearing, he was taking the place of the saw-mill superintendent who was on vacation. Because of the responsibility of his position and his peculiar relationship to management, and in view of the fact that his interests are apparently different from those of the production and maintenance employees, we shall exclude him.

We find that all production and maintenance employees of the Company at its Antigo, Wisconsin, plant, including the overseer in the green lumber yard, the kiln operator, the blockmill supervisor,

⁶ Wesley E. Allen.

⁷ The record discloses that, about 4 or 5 months prior to the hearing, the blockmill supervisor recommended the discharge of an employee who frequently was absent "on a spree." The employee never returned to work and it does not appear what action, if any, the Company took upon this recommendation.

⁸ Otto Wear.

⁹ Frank Fisher.

the log scaler, and watchmen, but excluding office and clerical employees, the timber cruiser and log buyer, the dimension mill and dry kiln superintendent, the saw-mill superintendent, the timber superintendent, the dimension mill foreman, and all 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

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, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Vulcan Corporation, Antigo, Wisconsin, 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 Eighteenth 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 the 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 International Woodworkers of America, C. I. O., for the purposes of collective bargaining.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Election.