

In the Matter of DIBRELL BROTHERS INC. and TOBACCO WORKERS
INTERNATIONAL UNION, AFL

Case No. 5-R-1716.—Decided November 22, 1944

Messrs. Frank Talbott, Jr., and W. C. Heard, of Danville, Va., for the Company.

Mr. George Benjamin, of Richmond, Va., and Mrs. Maude V. Fitzgerald, of Danville, Va., for the Union.

Mr. Philip Licari, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION.

STATEMENT OF THE CASE

Upon a petition duly filed by Tobacco Workers International Union, AFL, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Dibrell Brothers Inc., Danville, Virginia, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before George L. Weasler, Trial Examiner. Said hearing was held at Danville, Virginia, on October 17, 1944. The Company and the Union 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. At the close of the hearing, the Company moved to dismiss the petition on the ground that a prior consent election bars the present proceeding. The motion was referred to the Board by the Trial Examiner. For reasons stated in Section III, *infra*, the motion is denied. Subsequent to the hearing, the Company filed with the Board a motion to correct the record in certain respects. The Union, having been apprised by the Board of the Company's motion, has filed no objections within the time provided therefor. The motion is hereby granted and the record is corrected accordingly. 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

Dibrell Brothers Inc., a Virginia corporation, is engaged in the purchasing, processing, storing, and selling of leaf tobacco at Danville, Virginia. During the year ending June 30, 1944, the Company purchased green tobacco valued in excess of \$6,000,000, of which approximately 75 percent originated outside the State of Virginia. During the same period the Company sold tobacco valued in excess of \$7,000,000, of which approximately 90 percent was shipped to points outside the State of Virginia.

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

II. THE ORGANIZATION INVOLVED

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

III. THE QUESTION CONCERNING REPRESENTATION

On August 4, 1944, a consent election among the Company's employees was held under the auspices of the Board.¹ The Union failed to obtain a majority of the votes cast and thereafter filed objections to the conduct of the election. Subsequently, it requested permission of the Board to withdraw its objections and its petition. Permission was granted and the case was closed on September 22, 1944. Thus, no bargaining representative was chosen as a result of the consent election. Sometime during the month of September, the Union advised the Company that it then represented a majority of the Company's employees and wished to be recognized as their sole bargaining representative. The Company refused to recognize the Union until it was certified by the Board in an appropriate unit.

The Company urges that the petition in the instant proceeding be dismissed because of the prior consent election. However, the Union has submitted new evidence of substantial representation among the Company's employees consisting of at least 142 applications for membership dated since the time of the consent election.²

¹ Case No. 5-R-1634.

² See footnote 5, *infra*.

Furthermore, the record indicates that, in the past 90 days, the Company has substantially increased the number of its employees.³ We find, therefore, that there is no bar to the present proceeding.⁴

A statement of a Field Examiner for the Board, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.⁵

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 agree to a unit consisting of "all employees at the Company's plant in Danville, Virginia, working with or handling tobacco, or classed as tobacco workers, including truck drivers, but excluding all clerical employees, firemen, and all supervisory employees of the rank of assistant foreman, foreman and above, and all other supervisory employees. . . ." However, the Company desires to exclude cooper shop employees from the unit, whereas the Union seeks their inclusion.

The Company maintains as part of its operations a cooper shop located in a building across the street from its main plant. In the cooper shop, the Company manufactures hogsheads for the purpose of packing its tobacco. In connection with its cooper shop activities, the Company employs an individual under an arrangement whereby he builds hogsheads on a piece-work basis.⁶ This person, in turn, hires four employees who help him build hogsheads and whom he pays out of the proceeds he receives from the Company for the total number of hogsheads produced during any given period of time. Although the Company does not hire the cooper shop workers directly, they appear on the Company's pay roll and are subject to the same working conditions as the Company's other employees.⁷ We further note that, during slack seasons in the cooper shop, the Company employs the cooper shop workers as regular tobacco workers. The record discloses that the Company depends entirely on the cooper shop for its

³ During July 1944, the Company had in its employ approximately 60 workers. The record discloses that it now employs in excess of 500 workers.

⁴ See *Matter of New York Central Iron Works, Hagerstown, Maryland*, 37 N. L. R. B. 894, and *Matter of The Mead Corporation*, 58 N. L. R. B. 1645.

⁵ The Field Examiner reported that the Union submitted 49 membership cards and 142 applications for membership, and that all of the applications for membership bear dates subsequent to August 4, 1944. He further reported that there were 474 employees in the unit alleged to be appropriate.

⁶ George Washington Robinson is the individual concerned.

⁷ The Company's general superintendent testified that the cooper shop workers appear on the Company's pay roll for the purposes of complying with the provisions of the Federal Social Security Act and the Federal Fair Labor Standards Act.

supply of hogsheads, thereby making the cooper shop operations an integral part of its activities. In view of the above facts, we find that the cooper shop workers are the Company's employees and have a substantial interest in the Company's working conditions. We shall, therefore, include all cooper shop workers except for the person in charge of the shop.

We find, in accordance with the agreement of the parties and our foregoing determination, that all employees at the Company's plant in Danville, Virginia, working with or handling tobacco, or classed as tobacco workers, including truck drivers, and all cooper shop employees (except for the person in charge of the cooper shop), but excluding all clerical employees, firemen, all supervisory employees of the rank of assistant foreman, foreman and above, 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 Dibrell Brothers Inc., Danville, Virginia, 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 Fifth 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 Tobacco Workers International Union, AFL, for the purposes of collective bargaining.