

In the Matter of THEODORE KLEMENT d/B/A KLEMENT TIMBER COMPANY AND JACKSON LOGGING COMPANY and INTERNATIONAL WOODWORKERS OF AMERICA, LOCAL 2-67, CIO

Case No. 19-R-1362.—Decided November 30, 1944

Messrs. R. W. Maxwell and Leander T. Turner, both of Seattle, Wash., for Klement.

Mr. Arthur Newton, of Everett, Wash., for Jackson.

Messrs. Van C. Griffin and Karly Larsen, both of Seattle, Wash., for the Union.

Mr. Harry Nathanson, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Woodworkers of America, Local 2-67, CIO, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Theodore M. Klement d/b/a Klement Timber Company, Fortson, Washington, herein called Klement, Jackson, Logging Company, Arlington, Washington, herein called Jackson, both herein collectively called the Companies, the National Labor Relations Board provided for an appropriate hearing upon due notice before Joseph D. Holmes, Trial Examiner. Said hearing was held at Everett, Washington, on October 21, 1944. Klement, Jackson, 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. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. At the hearing Klement moved to dismiss the petition insofar as he was concerned on the ground that he is not an employer of the employees involved herein. For the reasons set forth in Section I, below, the motion is hereby denied. 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

Theodore M. Klement, doing business as the Klement Timber Company, manufactures lumber and lumber products from logs obtained in the State of Washington. His finished products are valued at \$300,000, annually of which 85 percent is shipped outside the State of Washington and sold in the lumber markets of the world.

Theodore Jackson, doing business as the Jackson Logging Company, is engaged in logging timber in the State of Washington. He has an oral contract with Klement to log timber on the latter's "stumpage" on a "cost-plus" basis. The employees of this operation are solely involved in the instant proceeding. Fifteen percent of the timber he logs on Klement's "stumpage" is shipped to Klement's sawmill, and of the balance, which is shipped to markets in Everett, Washington, 90 percent is sold in interstate commerce.

Klement's business is apparently divided into two categories. He operates a sawmill and also owns "stumpage" which is logged for him under contract. He owns the logged timber, some of which he uses in his sawmill, and the balance of which he sells in the open market. As noted above, Jackson has an oral contract to log Klement's "stumpage" on a "cost-plus" basis. This agreement has been in effect since 1942. Pursuant to its terms, Jackson hires, discharges, and directs the work of the logging employees, and furnishes most of the equipment. Klement pays all salaries, Social Security taxes, industrial insurance premiums, the cost of maintaining all the logging equipment, some of which he supplies, and all other additional expenses in connection with the logging operation.¹ In addition, Jackson is paid a determined amount by Klement for each thousand feet logged. All books and records are kept at Klement's office by his bookkeeper, except the time book which is kept by Jackson. Before each pay period the time book is delivered to Klement for pay-roll purposes. Jackson is registered as the employer with the appropriate governmental agencies for Social Security taxes, withholding tax, and industrial insurance. However, all returns are prepared by Klement's bookkeeper. Although Jackson uses his own equipment, and hires, discharges, and directs the work of the men engaged in the logging operation, Klement makes the final decisions with regard to salaries, vacations, and grievances. It also is true that Klement may discharge any or all members of the logging crew.

¹ Klement charges these items to the "Jackson Account"

In view of the control exercised by Klement over the Jackson Logging Company operation on his "stumpage" and the employees engaged therein, we are of the opinion and find that he and Jackson are the employers, and each of them is the employer, of such employees within the meaning of Section 2 (2) of the Act.² We also find that Klement and Jackson are each engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

International Woodworkers of America, Local 2-67, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On June 26, 1944, the Union made a written request upon Klement for recognition as the bargaining agent of the employees engaged in "the Jackson Logging Company operation." In a telephone conversation on the same day the Union's request was refused.³

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.⁴

We find that a question affecting commerce has arisen concerning the representation of employees of the Companies, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

The Union desires a unit consisting of all employees engaged in the "Jackson Logging Company operation" on Klement's "stumpage," excluding supervisory and office employees. Neither Klement nor Jackson opposes the composition of the unit sought.

We find that all employees of the Companies engaged in the Jackson Logging Company operation on Klement's "stumpage," excluding office 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.

² See *Matter of Sierra Madre-Lamanda Citrus Association and Benjamin H. Betz, an individual doing business as Betz Packing Company*, 23 N. L. R. B. 143, and other cases cited therein; *Matter of Long Lake Lumber Company and F. D. Robinson*, 34 N. L. R. B. 700.

³ Jackson has a written contract with the Union.

⁴ The Field Examiner reported that the Union submitted 30 authorization cards and that there were 28 employees in the alleged appropriate unit.

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 Theodore Klement d/b/a Klement Timber Company, Fortson, Washington, and Jackson Logging Company, Arlington, Washington, 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 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 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, Local 2-67, CIO, for the purposes of collective bargaining.