

IN the Matter of JALMER BERG and PUGET SOUND DISTRICT COUNCIL,
LUMBER AND SAWMILL WORKERS, A. F. L.

Case No. 19-R-1400.—Decided November 30, 1944

Mr. Harold Lant, of Bellingham, Wash., for Berg.

Mr. E. J. Eagen, of Seattle, Wash., for the A. F. L.

Mr. Karly Larsen, of Bellingham, Wash., for the C. I. O.

Mr. Thomas A. Ricci, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Puget Sound District Council, Lumber and Sawmill Workers, A. F. L., herein called the A. F. L., alleging that a question affecting commerce had arisen concerning the representation of employees of Jalmer Berg, Glacier, Washington, herein called Berg, the National Labor Relations Board provided for an appropriate hearing upon due notice before Joseph D. Holmes, Trial Examiner. Said hearing was held at Bellingham, Washington, on October 31, 1944. Berg, the A. F. L., and International Woodworkers of America, Local 2-46, C. I. O., herein called the C. I. O., 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 hearing the C. I. O. moved to dismiss the petition. The Trial Examiner referred the motion to the Board for determination. For reasons set forth in Sections III and IV, *infra*, the motion is 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 COMPANY

Jalmer Berg is individually engaged in the production of logs at Glacier, Washington. None of the materials used in his operations

is received from sources outside the State of Washington. He produces approximately 15,000,000 feet of logs per year, all of which are shipped to Bellingham, Washington, where they are sold to mills operating wholly within that State. A substantial portion of the finished materials produced at the said mills, such as pulp, plywood, lumber, and shingles, is shipped by the various manufacturers out of the State of Washington.

Berg admits, and we find, that he is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

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

International Woodworkers of America, Local 2-46, affiliated with Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

About 1 week prior to September 11, 1944, the date of the filing of the petition herein, the A. F. L. requested Berg to recognize it as the bargaining representative of his production and maintenance employees. Berg replied that because of the 1943 certification of the C. I. O. by the National Labor Relations Board¹ and because of subsequent dealings with the C. I. O., he would not recognize the A. F. L. until it is certified by the Board in an appropriate unit.

On September 14, 1943, Berg and the C. I. O. executed a collective bargaining agreement covering the employees sought by the A. F. L. herein. This contract was to remain in effect until April 1, 1944, and provided:

Article XXI

(b) Unless either party notifies the other of a desire to change the terms of this Agreement not less than sixty (60) days prior to the expiration date and presents proposed revisions not less than thirty (30) days prior to such expiration date, at which time negotiations shall start, this Agreement will automatically continue in effect for the succeeding twelve (12) months.

* * * * *

(e) If no agreement is reached at the expiration of this Agreement and negotiations are continued, the Agreement shall remain in force up to the time a subsequent agreement is reached, but shall terminate if negotiations are discontinued by either party.

¹ *Matter of Jalmer Berg, an individual*, 45 N. L. R. B. 1065, certification issued July 7, 1943.

(f) This agreement may be terminated on April 1 of any year by either party giving at least sixty-five (65) days written notice to the other party of a desire to terminate. However, both parties agree to meet in negotiations within fifteen (15) days for the purpose of negotiating possible renewal of the Agreement. If negotiations continue after April 1, of any year, the existing contract shall remain in full force and effect until such negotiations are discontinued by either party or a new agreement has been mutually accepted.

On January 20, 1944, the C. I. O. sent a letter to Berg, which, in part read as follows:

Local Union No. 2-46, I. W. A. hereby notifies you, in accordance with the termination and revision provision of the working agreement which exists between this Local Union and your company, that this Local Union desires revisions and amendments in the working agreement.

Shortly thereafter, the C. I. O., through the International Negotiating Committee of the International Woodworkers of America, C. I. O., presented to Berg a list of proposed amendments affecting almost all the substantive provisions of the 1943 contract. In turn, Berg, through the Lumberman's Industrial Relations Committee, demanded a comprehensive revision of the contract, based on cross proposals. Several of the resulting disputed issues were settled by negotiations between the two committees and others are still unresolved. The C. I. O. contends that on April 1, 1944, its contract with Berg continued in effect for a further period of 12 months and therefore constitutes a bar to the instant proceeding. Berg takes a neutral position with regard to the effect of the contract.

Since the letter of January 20, 1944, was sent by the C. I. O. to Berg more than 65 days prior to April 1, 1944, and expressly stated that it was written in accordance with the termination as well as the revision provision of the contract, it is clear that renewal of the agreement for an additional year was forestalled. Accordingly, we find that the 1943 contract between Berg and the C. I. O. does not constitute a bar to 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.²

² The Field Examiner reported that the A. F. L. submitted 23 authorization cards, and that the names of 18 persons appearing on the cards were listed on the Company's pay roll of September 16, 1944, which contained the names of 33 employees in the alleged appropriate unit.

The C. I. O. submitted 23 designations. The names of 22 persons appearing on the cards were contained in the aforesaid pay roll.

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 A. F. L. requests a unit of all Berg's production and maintenance employees at his logging operations near Glacier, Washington, excluding clerical and supervisory employees. Berg agrees with the A. F. L. regarding the composition and scope of the appropriate unit, but would also exclude operators of trucks for hire, concerning whom the A. F. L. is neutral. The C. I. O. contends that the unit requested is inappropriate because Berg has authorized the Lumberman's Industrial Relations Committee to negotiate on his behalf on the basis of a multi-employer unit, and that the only unit in which Berg's employees can properly be represented is one embracing the employees of all employers for whom that committee has bargained. Should its contention be overruled by the Board, the C. I. O. agrees to the unit sought by the A. F. L., but would include operators of trucks for hire.

For several years, the International Woodworkers Negotiating Committee, on behalf of a number of C. I. O. locals, has negotiated collective bargaining agreements with the Lumberman's Industrial Relations Committee, which was authorized by a number of employees in the logging business in the Washington State area to negotiate on their behalf. At times during the past 4 years Berg has authorized the employers' committee to negotiate agreements on his behalf, but the record is vague as to whether such authorization was in effect in September 1943, or at the time of the hearing. However, the record clearly establishes that, at all times, Berg reserved to himself the right to accept or reject any contracts recommended by the employer committee.³ In September 1943, the C. I. O. offered to Berg the form of contract which had resulted from negotiations between the two committees. Several conferences were had between Berg and his attorney and officers of the C. I. O. and an agreement was reached on September 14, only after a number of clauses of the contract submitted by the C. I. O. were negotiated anew and several of them had been altered.

The C. I. O. argues that Berg's authorization to the employers' committee, the history of negotiations between the two committees, and the adoption by Berg, though in modified form, of the contract which resulted from the 1943 negotiations between these committees, preclude the Board from finding that a unit confined to Berg's employees is appropriate. We deem it determinative, however, that

³ The record also discloses that, in authorizing the employees' committee to negotiate on its behalf, the C. I. O. also specified that all proposed settlements must be referred to its membership for acceptance or rejection.

Berg, contending that his employees comprise a separate unit, manifests a present desire to pursue an individualistic rather than a concerted course of action with respect to his labor relations. Consequently, we find that a unit confined to his employees is appropriate.⁴

In addition to using his own trucks, operated by drivers on his own pay roll, Berg, in his hauling operations, contracts with independent truckers to haul a portion of his logs. The inclusion of drivers in Berg's direct employ who operate his trucks is not in dispute. The operators of the trucks owned by the contractors are hired and discharged by them. The contractors also have complete control over their wages, hours and working conditions.⁵ In our 1942 decision and in the 1943 contract between the C. I. O. and Berg, operators of trucks for hire were excluded. In view of the foregoing facts, we shall exclude operators of trucks for hire.

We find that all Berg's production and maintenance employees at his logging operations near Glacier, Washington, excluding operators of trucks for hire, 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 payroll 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 Jalmer Berg, Glacier, 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

⁴ See *Matter of George F. Carleton & Company*, 54 N. L. R. B. 222.

We also note that, in accordance with the C. I. O.'s unopposed request, in 1942 we found appropriate in *Matter of Jalmer Berg, an individual, supra*, a unit limited to Berg's employees, and that the 1943 contract between the C. I. O. and Berg encompassed substantially the same unit.

⁵ Several of the contractors drive their own trucks.

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 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 they desire to be represented by Puget Sound District Council, Lumber and Sawmill Workers, A. F. L., or by International Woodworkers of America, Local 2-46, C. I. O., for the purposes of collective bargaining, or by neither.