

In the Matter of GREAT BEAR LOGGING COMPANY and LUMBER & SAW-
MILL WORKERS UNION, LOCAL 2767, A. F. L.

Case No. 19-R-1401.—Decided November 30, 1944

Mr. Warren T. Smith, of Morton, Wash., for the Company.

Mr. E. J. Eagen, of Seattle, Wash., and *Mr. Edward LaChapelle*,
of Tacoma, Wash., for the LSW.

Mr. A. F. Hartung, of Portland, Oreg., for the IWA.

Mr. Herbert C. Kane, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Lumber & Sawmill Workers Union, Local 2767, A. F. L., herein called the LSW, alleging that a question affecting commerce had arisen concerning the representation of employees of Great Bear Logging Company, Lindberg, Washington, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Joseph D. Holmes, Trial Examiner. Said hearing was held at Chehalis, Washington, on October 12, 1944. The Company, the LSW, and International Woodworkers of America, Local 2-93 CIO, herein called the IWA¹ 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. 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

The Company is a Washington corporation having its principal place of business at Lindberg, Washington. It is engaged in logging under contract with St. Regis Paper Company. The Company annually cuts about \$360,000 worth of logs at this location. Annually, it

¹ At the hearing the Trial Examiner granted a motion of the IWA to intervene.

purchases materials and supplies amounting to approximately \$10,000, the greater part of which is purchased in Seattle, but manufactured outside the State of Washington. Approximately 90 percent, however, of the logs cut, which are shipped and sold within the State of Washington, goes outside the State and into national defense.

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

II. THE ORGANIZATIONS INVOLVED

Lumber & Sawmill Workers Union, Local 2767, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

International Woodworkers of America, Local 2-93, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

In October 1940, the Company and IWA, following negotiations between the Tri-County Loggers Association, a committee of the Lumbermen's Association of which the Company was a member, and the Twin-District Committee which represented the IWA, entered into a contract which by its terms covered all the employees of the Company with certain definite exceptions. The contract was to terminate on April 1, 1941, and was to remain in effect from year to year thereafter unless a written notice to terminate or modify its terms was given not less than 60 days prior to April 1, of any contract year; in no event was the contract to extend beyond April 1, 1945. The contract further provided that after notice to terminate or modify had been given and negotiations commenced and no agreement had been reached at the expiration of the yearly contract period, the contract was to remain in force up to the time a subsequent agreement was reached or negotiations discontinued by either party.

On January 21, 1944, the IWA, in accordance with the terms of the contract, notified the Company of its desire for revisions and amendments in the agreement. On January 29, 1944, the Company likewise notified the IWA of its desire to "open our contract with you for negotiations, which negotiations will be handled for us by the Lumbermen's Industrial Relations Committee,² as has been done heretofore, conforming to the negotiations for the industry." Both the IWA and the Company expressed a desire for changes relating to almost all of the substantive provisions of the contract, including wages, hours of labor, union maintenance, and vacations. Negotiations between the Lumbermen's Committee and the IWA were commenced on March 2,

² The Lumbermen's Committee, a successor to the Tri-County Committee, is a separate organization formed within the framework of the Lumbermen's Association for the purpose of handling the labor relations of its members.

1944, and continued until August 1, 1944, when the case was certified to the National War Labor Board and remanded by it to the West Coast Lumber Commission. The Lumber Commission, after a hearing held on September 22, 1944, issued an interim order directing the parties to continue negotiations for 30 days, at the end of which time if the parties had not agreed, the Commission would again consider the case. On July 6, 1944, the LSW sent a letter to the Company asking for recognition and claiming to represent 90 percent of the employees of the Company; on September 11, 1944, the LSW filed its petition with the Board.

The IWA, the intervenor herein, claims that there was no termination of the existing contract and that its demands were merely for modifications thereof. The Board has held that a request for modifications much less in scope than those asked for in the instant case was substantial enough to serve as a notice of contract termination rather than merely a notice of a desire for modification.³ In any event, a request for modifications substantial enough to require extended negotiations between the parties, as was here required, shows an election to terminate.⁴

The further contention of the IWA that the contract operates as a bar because, by its terms, it remained in full force and effect pending negotiations, is also without merit. We have held that such a provision would extend the contract for an indefinite period of time and, therefore, such contract would not be a bar to a present determination of representatives.⁵ Since we are of the opinion that the contract has been terminated, or at most is one of indefinite duration, we find that it is not a bar to a present determination of representatives.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the LSW represents a substantial number of employees in the unit hereinafter found appropriate.⁶

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 LSW contends that a unit comprising all employees of the Company at its logging operations in the vicinity of Morton, Wash-

³ *Matter of The American Woolen Company, Webster Mills*, 57 N. L. R. B. 647.

⁴ *Matter of Pure-Pac Corporation, et al.*, 55 N. L. R. B. 1386.

⁵ *Matter of General Electric Company*, 48 N. L. R. B. 1044.

⁶ The Field Examiner reported that the LSW submitted 37 authorization petitions; that the names of 32 persons appearing on the petitions were listed on the Company's pay roll of September 15, 1944, which contained the names of 36 employees in the appropriate unit; and that the cards were dated, 2 in July 1944 and 30 in September 1944.

The IWA rests upon its prior contract with the Company to show its interest.

ington,⁷ excluding supervisory and clerical employees, is appropriate. The Company agrees generally with the foregoing unit, but would also exclude employees engaged in falling and bucking, whom it contends are in the employ of an independent contractor and are, therefore, not employees of the Company. The IWA contends that the appropriate unit should be coterminous with the membership of the Lumbermen's Committee.

As indicated above, the Company in its labor relations has been represented by the Lumbermen's Committee and its predecessors since 1939. Representation by the Committee has been confined, however, solely to the negotiation of broad contract issues, the companies reserving to themselves the right to negotiate on all local issues, to enter into contracts, to disregard any or all recommendations of the Committee, and to withdraw from membership in the Committee at any time upon 30 days' written notice. The Company contends, in effect, that since representation by the Committee has been thus limited, its past acquiescence in the Committee's recommendations has not impaired its individuality as an employer nor detracted from the status of its employees as a separate bargaining unit. While similar contentions have been found lacking in merit by the Board in holding that only an association-wide unit is appropriate where, as here, employers have consistently adhered to bargaining on an association-wide basis,⁸ it has not so found where an employer has evinced an intention not to be bound by such multiple-employer negotiations. Since the Company has expressed its intent to pursue an individualistic course of action with regard to its labor relations, we find that such intent is controlling and that a unit comprising only employees of the Company is appropriate.⁹

The Company engages the services of so-called subcontractors who, in turn, hire men to perform falling and bucking operations. The Company, however, pays the wages of the employees hired by the subcontractors, as well as workmen's compensation, industrial insurance, and withholding tax, and does all the bookkeeping work involving these employees. After all of the foregoing costs are paid by the Company, the subcontractors receive the difference between the contract price and such costs. While as stated above the subcontractors do their own hiring, the Company has the right to discharge and discipline the employee so hired. The Company may discharge the subcontractors at will, and they are, in effect, merely supervisory employees of the Company. We find that the Company is the employer within Section 2 (2) of the Act of the employees engaged by the subcontractors in falling and bucking. We shall,

⁷ The Company's operations are at Lindberg, Washington, which is in the vicinity of Morton, and serviced by the Morton Post Office.

⁸ See *Matter of Rayonmer Incorporated, Grays Harbor Division*, 52 N. L. R. B. 1169.

⁹ Cf. *Matter of George F. Carleton & Company*, 54 N. L. R. B. 222.

therefore, include these employees in the unit; we shall not, however, include the subcontractors therein.

We find that all the employees of the Company engaged in logging in the vicinity of Morton, Washington, including employees engaged in falling and bucking, but excluding clerical employees, subcontractors, 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 Great Bear Logging Company, Lindberg, 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 payroll period immediately preceding the date of this Direction, including employees who did not work during the said payroll 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 Lumber & Sawmill Workers Union, Local 2767, A. F. L., or by International Woodworkers of America, Local 2-93-CIO, for the purposes of collective bargaining or by neither.