

In the Matter of CANYON LUMBER COMPANY *and* INTERNATIONAL
WOODWORKERS OF AMERICA, LOCAL 2-46, C. I. O.

Case No. 19-R-1363.—Decided January 11, 1945

Messrs. A. E. Dailey, J. H. Hambridge, and J. N. McNeely, of Everett, Wash., for the Company.

Messrs. Van C. Griffin and Karly Larsen, of Seattle, Wash., and William Wallace, of Bellingham, Wash., for the Union.

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

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon a petition duly filed by International Woodworkers of America, Local 2-46, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Canyon Lumber Company, Everett, 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 Everett, Washington, on October 20, and November 15, 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. 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

Canyon Lumber Company, a Washington corporation, has its principal place of business at Everett, Washington, where it operates a mill for the manufacture of lumber and lumber products. All the

logs used in its operations are obtained in the State of Washington and its annual products are valued in excess of \$500,000. Almost 100 percent of its products is shipped to markets outside the State of Washington.

The Company does not deny, and we find, that it is engaged in commerce within the meaning of the National Labor Relations Act.

In July 1943 the Company purchased large tracts of timberland in Watcom County, State of Washington, together with some heavy logging equipment formerly used by the prior owner. In order to have this timber felled and brought to its mill for manufacturing, the Company made arrangements with a number of logging operators to have them go into the woods with crews to fell, buck, and yard the logs. Among these operators are Eric Nestos, Eino Usitalo, Glen Corning, White Brothers, and Lee Simonson and R. H. Sussex, doing business as Simonson & Sussex. Seeking to represent the operators' crews, the Union contends that the Company is their employer, while the Company denies that such relationship exists.

The Company has oral agreements with Nestos, Usitalo, and Simonson & Sussex, whereby Nestos receives \$17, and the other two operators \$16, per thousand feet of logs delivered to the Company's mill. The agreements are for 1 year and may be terminated by any of the parties at will. Nestos, Usitalo, and Simonson & Sussex keep their business records at the office of a certified public accountant whose services are independently engaged and paid for by each of them. This accountant does no work for the Company. These operators pay wages to their employees with their personal checks. Simonson & Sussex makes unemployment compensation, compensation insurance, and social security payments on behalf of workmen in its crews.

The uncontradicted testimony of Lee Simonson, R. H. Sussex, Nestos, and two company officials indicates that the Company has no authority in regard to the hiring or discharging of any of the employees who work for Simonson & Sussex, Nestos, and Usitalo. As to these employees, it is clear that the Company exercises no control over their duties, wages, or working conditions. The record also establishes that, with respect to the three operators mentioned, except for occasional suggestions inspired by the Company's pressing need for a maximum delivery of logs, which are accepted as advisory and not mandatory, the Company in no way participates in the conduct of their businesses. It also appears from the record that Glen Corning and White Brothers fell and yard the Company's timber as contractors on the same basis as Nestos, Usitalo, and Simonson & Sussex.

In view of the foregoing facts, and upon the entire record in the case, we are not persuaded that Canyon Lumber Company is the employer of the operators' crews, within the meaning of Section 2 (2) of the Act. Accordingly, we shall dismiss the petition.

ORDER

Upon the basis of the foregoing findings of fact, and pursuant to Section 9 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the petition for investigation and certification of representatives of employees of Canyon Lumber Company, Everett, Washington, filed by International Woodworkers of America, Local 2-46, C. I. O., be, and the same hereby is, dismissed.