

In the Matter of VICTOR LUMBER COMPANY and UNITED CONSTRUCTION WORKERS, AFFILIATED WITH UNITED MINE WORKERS OF AMERICA

*Case No. 5-R-1778.—Decided January 19, 1945*

*Mr. Fred Shortt*, of Vansant, Va., for the Company.

*Mr. Thomas Davis*, of Norton, Va., for the Union.

*Mr. Louis Cokin*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by United Construction Workers, affiliated with United Mine Workers of America, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Victor Lumber Company, Wise, 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 Wise, Virginia, on January 3, 1945. The Company and the Union appeared, participated, and 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 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

Victor Lumber Company is a partnership with its principal office at Wise, Virginia. It operates a planing mill at Wise, Virginia, and a sawmill at Eolia, Kentucky. During November and December 1944, the Company sold products valued at about \$13,100, approximately 25 percent of which was shipped to points outside the Commonwealth of Virginia. During the same period the Company purchased materials

valued at about \$20,500, approximately 35 percent of which was shipped to it from points outside the Commonwealth of Virginia.

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

## II. THE ORGANIZATION INVOLVED

United Construction Workers, affiliated with United Mine Workers of America, is a labor organization, admitting to membership employees of the Company.

## III. THE QUESTION CONCERNING REPRESENTATION

The Company refuses to recognize the Union as the exclusive collective bargaining representative of its employees until such time as the Union is certified by the Board.

A statement of a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found to be appropriate.<sup>1</sup>

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 Union urges that all production and maintenance employees at the planing mill and sawmill of the Company, including lumber mill workers, truck drivers, timber cutters and loggers, and watchmen-firemen, but excluding the shipping clerk and office clerical and supervisory employees, constitute an appropriate unit. The only controversy with respect to the unit concerns the watchmen-firemen.

The Company employs two persons who are classified as watchmen-firemen whose duties involve the protecting of the Company's property and watching for trespassers. In addition, they get up steam in the boilers. They work the same hours as the regular employees and are not armed, militarized, deputized, or uniformed. Inasmuch as they perform the type of duties normally performed by watchmen, we shall include them in the unit.

We find that all production and maintenance employees at the planing mill and sawmill of the Company, including lumber mill workers, truck drivers, timber cutters and loggers, and watchmen-firemen, but excluding the shipping clerk, office clerical employees, and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or

<sup>1</sup> The Field Examiner reported that the Union presented 47 authorization cards. There were 18 persons in the appropriate unit on December 11, 1944.

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 find that the question concerning representation which has arisen can best be resolved by means of an election by secret ballot. The Union urges that a pay roll as of November 1, 1944, be used to determine eligibility to vote. Inasmuch as no persuasive reason appears as to why we should depart from our usual practice, we shall direct that those eligible to vote shall be 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 Victor Lumber Company, Wise, 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 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 any 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 United Construction Workers, affiliated with United Mine Workers of America, for the purposes of collective bargaining.