

In the Matter of NORTH MEMPHIS LUMBER COMPANY, EMPLOYER *and*
UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,
AFL, PETITIONER

Case No. 32-RC-81.—Decided February 16, 1949

DECISION

AND

DIRECTION OF ELECTION

Upon a petition duly filed, a hearing was held before a hearing officer of the National Labor Relations Board. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

Pursuant to the provisions of Section 3 (b) of the National Labor Relations Act, the Board has delegated its powers in connection with this case to a three-man panel consisting of the undersigned Board Members.*

Upon the entire record in this case, the Board finds:

1. The Employer is a Tennessee corporation with its corporate office and place of business located in Memphis, Tennessee. It operates a plant for the manufacture of hardwood flooring, a dry kiln for the drying of lumber, and a retail lumber yard for the sale of finished lumber products and other building materials. The manufacturing plant, although located 10 or 12 miles from the dry kiln and retail lumber yard, is, nevertheless within the confines of the city of Memphis.

The Employer admits that it is engaged in interstate commerce within the meaning of the Act insofar as its manufacturing and dry kiln enterprises are concerned. The manufacturing division operations involve a very substantial inflow of raw materials and outflow of products in interstate commerce, and the kiln division similarly ships a substantial volume of products out of the State. But the Employer contends that its retail lumber yard operations, as such, are essentially local in character and that for this reason, the Board is without jurisdiction over that phase of its activities.

With respect to the operation of its retail lumber yard, the Employer, during the 6-month period ending October 31, 1948, purchased finished lumber, lumber products, and other building materials

*Reynolds, Murdock, and Gray.

amounting in value to approximately \$200,000, of which amount about 40 percent was shipped to the Employer from points outside the State of Tennessee. During the same period, retail sales by the Employer amounted to approximately \$212,000 in value, all of which was sold to purchasers within the State of Tennessee.¹

The record shows that corporate stock ownership of the Employer is divided among only five individuals, with active control over all corporate affairs lodged in the president who, together with his wife, owns 50 percent of the corporate stock. It does not appear that any of the other stockholders are associated with management. All of its activities are conducted in the corporate name. The Employer employs a single clerical staff for all three enterprises, and maintains a common bookkeeping department. The corporate office is located at 510 Pear Street, Memphis, Tennessee, on which premises there is also located the retail lumber yard. Gasoline supplies for all vehicles owned by the Employer are stored on the retail premises and all of the Employer's trucks call there for their gasoline requirements. The dry kiln is located across Pear Street at No. 511. The record also shows that conditions of employment with respect to vacations, hospitalization, and medical care are the same for all employees, and that a fairly uniform wage policy as established by the Employer's president applies to the employees in all three operations.

In other cases involving employers engaged in similar activities, we have held such employers to be engaged in interstate commerce within the meaning of the Act.² Upon the basis of the entire record in this case, we are of the opinion that the retail lumber yard operations are part of an integrated enterprise and that the operations of the retail lumber yard necessarily affect commerce within the meaning of the Act.³

We find, contrary to the contentions of the Employer, that it is engaged in commerce within the meaning of the Act.

2. The labor organizations involved herein claim to represent employees of the Employer.

3. We find that a question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

¹ The Employer's president testified, however, that a small amount of retail merchandise may possibly have been sold and delivered to points outside the State of Tennessee.

² Cf. *Matter of Farmville Manufacturing Company*, 76 N. L. R. B. 237; *Matter of W. P. Stephens Lumber Company*, 73 N. L. R. B. 1451; *Matter of J. F. Johnson Lumber Company*, 73 N. L. R. B. 320; *Matter of Clinton Lumber Corporation*, 72 N. L. R. B. 217.

³ See *N. L. R. B. v. Weyerhaeuser Timber Company, Clemons Branch*, 132 F. (2d) 234 (C A 9) 1942; *Matter of L. B. Smith, Inc.*, 70 N. L. R. B. 1326; *Matter of Fairchild Engine and Airplane Corporation*, 72 N. L. R. B. 381, 72 N. L. R. B. 385.

4. The Petitioner and the Intervenor request a single unit of production and maintenance employees, including truck drivers, employed at the Employer's hardwood flooring manufacturing plant, dry kiln, and retail lumber yard, but excluding all office and clerical employees, professional employees, watchmen, guards, and supervisors as defined in the Act. The Employer does not oppose the requested unit or the categories of employees to be included or excluded but contends: (1) the employees of the retail lumber yard should be excluded;⁴ and (2) separate production and maintenance units should be established for the employees in each of the other two plants. There is no history of collective bargaining for any of the employees in any of the Employer's plants.

The hardwood manufacturing plant employs 36 production and maintenance employees,⁵ including 13 machine operators or employees who perform duties related to machine processes. The dry kiln employs 30 employees including a number of lift truck drivers and a group of temporary employees referred to as construction employees. Except for the group of construction employees, the work of the dry kiln employees is concerned with the unloading of stacks of lumber of 15,000 to 18,000 pounds from freight cars, their transfer to the kiln, and the reloading of the lumber for shipment after the drying process has been completed. Practically all lumber used by the Employer in the manufacture of flooring is processed in the dry kiln.

As previously indicated, the hardwood manufacturing plant, although located about 10 or 12 miles from the dry kiln and the adjoining retail lumber yard is, nevertheless, together with the dry kiln and retail lumber yard, within the city limits of Memphis, Tennessee. While the record discloses that there is no interchange of employees among the three plants and that each plant is separately supervised or managed with authority in the supervisors to fix the appropriate wage for individual workers, such wage determination is subject to the overriding authority of the Employer's president.⁶ As hereinabove stated, all employees enjoy the same vacation benefits, hospitalization and medical care. Moreover, we believe that the employees of the several plants, particularly those of the dry kiln and the retail lumber yard, have, through their relatively close proximity to one

⁴ The production and maintenance employees in the retail lumber yard consist of five truck drivers, one carpenter, and three laborers.

⁵ The record is not clear as to whether the figure of 36 production and maintenance employees at the manufacturing plant is inclusive of 1 truck driver employed at such plant. The Employer does not oppose the inclusion of the truck drivers in a unit of production and maintenance employees.

⁶ The Employer's president also has the ultimate authority with respect to the adjustment of grievances not settled at lower levels of supervision.

another, frequent opportunities for the discussion of common employment problems.

Although there are factors here present which, under other circumstances, might justify the establishment of separate units,⁷ the functional relationship between the flooring plant and the dry kiln, the ultimate control of wage policies and the adjustment of grievances by the Employer's president, and the community of interest among all employees in common conditions of employment, all persuade us that a single unit of production and maintenance employees in the three plants of the Employer would be more appropriate for the purposes of collective bargaining.⁸

We find that all production and maintenance employees including truck drivers in the Employer's dry kiln and retail lumber yard in Memphis, Tennessee, but excluding all office and clerical employees, professional employees, watchmen, guards, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with the Employer an election by secret ballot shall be conducted as early as possible but not later than 30 days from the date of this Direction under the direction and supervision of the Regional Director for the Fifteenth Region and subject to Sections 203.61 and 203.62 of National Labor Relations Board Rules and Regulations—Series 5, as amended, among the employees in the unit found appropriate in paragraph numbered 4, above, who were employed during the pay-roll period immediately preceding the date of this Direction of Election, including employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off 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 and also excluding employees on strike who are not entitled to reinstatement, to determine whether they desire to be represented, for purposes of collective bargaining, by United Brotherhood of Carpenters and Joiners of America, AFL, or International Woodworkers of America, CIO, or neither.

⁷ See *Matter of Burgess Battery Company*, 76 N. L. R. B. 820.

⁸ See *Matter of Biles-Coleman Lumber Co., Inc.*, 24 N. L. R. B. 1036. Cf. *Matter of Block Brothers*, 80 N. L. R. B. 257; *Matter of Johnson Lumber Co.*, 78 N. L. R. B. 1181; *Matter of Geneva Forge, Inc.*, 76 N. L. R. B. 497; *Matter of Cummer-Graham*, 71 N. L. R. B. 289.