

In the Matter of **KESTERSON LUMBER CORPORATION AND IRVING E. KESTERSON AND W. I. KESTERSON, D/B/A KESTERSON BOX COMPANY**¹ and **KLAMATH BASIN DISTRICT COUNCIL, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AFL**

Case No. 19-R-1441.—Decided April 5, 1945

Mr. John B. Ebinger, of Klamath Falls, Oreg., for the Company.

Messrs. Donald Gilman and Hugh R. Haddock, of Klamath Falls, Oreg., for the AFL.

Messrs. Vernon N. Chase and M. G. King, of Klamath Falls, Oreg., for the IWA.

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

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Klamath Basin District Council, United Brotherhood of Carpenters and Joiners of America, AFL, hereinafter called the AFL, alleging that a question affecting commerce had arisen concerning the representation of employees of Kesterson Lumber Corporation, and Irving E. Kesterson and W. I. Kesterson, doing business as Kesterson Box Company, all of Klamath Falls, Oregon, and herein collectively called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before John E. Hedrick, Trial Examiner. Said hearing was held at Klamath Falls, Oregon, on February 6, 1944. The Company, the AFL, and Local 6-12, International Woodworkers of America, CIO, herein called the IWA, 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 opportunity to file briefs with the Board. In its brief, the IWA

¹ Name as amended at the hearing.

moved to dismiss the petition. For reasons set forth in Section III, *infra*, the motion is denied.

Upon the entire record in the case, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Kesterson Lumber Corporation, organized and existing under the laws of the State of Oregon, has its office and principal place of business at Klamath Falls, Oregon, where it is engaged in the manufacture and sale of rough and finished lumber. It uses 45 to 50 million board feet of logs per year, all of which is obtained from points within the State of Oregon. It produces approximately 50 million board feet of rough and finished lumber per year. A substantial portion of its products is sold to the Kesterson Box Company, which, after processing it, ships almost all of it to points outside the State of Oregon. Including the portions sold to the Kesterson Box Company, approximately 95 percent of the products of the Kesterson Lumber Corporation is shipped to points outside that State.

Kesterson Box Company, a partnership, has its office together with that of the Kesterson Lumber Corporation, and produces boxes and box shooks in a plant adjacent to the lumber mill of the Kesterson Lumber Corporation. It purchases all its lumber from the Kesterson Lumber Corporation and ships almost all its finished products to points outside the State of Oregon. Both the corporation and the partnership have the identical management personnel.

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

II. THE ORGANIZATIONS INVOLVED

Klamath Basin District Council, United Brotherhood of Carpenters and Joiners of America, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

Local 6-12, International Woodworkers of America, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On or about October 17, 1944, the AFL demanded recognition from the Company as the exclusive bargaining representative of its production and maintenance employees. The Company, through its attorney, replied that it could not extend such recognition because of an

outstanding certification of the IWA as the bargaining representative of the employees involved.

On December 8, 1942, the IWA was certified by the Board as the exclusive bargaining representative of all production and maintenance employees of Kesterson Lumber Corporation.² Thereafter, the IWA and the Kesterson Lumber Corporation endeavored to agree upon the terms of a collective bargaining agreement but were unable to resolve a number of disputes which arose. The disputes were referred to the War Labor Board which in turn referred them to the West Coast Lumber Commission for hearing and determination. On January 27, 1944, in accordance with a directive issued by the West Coast Lumber Commission, the IWA executed a collective bargaining contract with Kesterson Lumber Corporation and Kesterson Box Company.

Article XV, clauses (a) and (b), of the contract, provide:

(a) This agreement shall remain in full force and effect until April 1, 1944. Unless either party notifies the other of a desire to change the terms of this agreement that [sic] 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, this agreement will automatically continue in effect for the succeeding twelve (12) months.

(b) If such notice of desired changes in this agreement, as above provided, is given by either party to the other, negotiations with respect to such changes shall be held commencing not less than thirty (30) days prior to expiration. If these negotiations do not result in agreement by the expiration date, this agreement shall at the expiration date become null and void, unless the parties at that time mutually agree to continue negotiations. If they do so agree, then this agreement shall continue in full force and effect until such negotiations are broken off by either party on written notice to the other party or an agreement is reached.

On January 29, 1944, the IWA wrote to the Kesterson Lumber Corporation as follows:

Local Union No. 6-12, IWA, hereby notifies you, in accordance with the termination and revision provision of the working agreement which exists between this Local Union and your Company,

² *Matter of Kesterson Lumber Corporation*, 45 N. L. R. B. 193

At the time of this certification, the operations now carried on by the Kesterson Box Company were a part of the business operations of the Kesterson Lumber Corporation. During the year 1943 the Kesterson Box Corporation was organized to conduct the box manufacturing operations with the same equipment and employees previously used by the Kesterson Lumber Corporation. In the latter part of 1944 Kesterson Box Corporation was dissolved and its box manufacturing operations are now carried on by Irving E. Kesterson and W. I. Kesterson, as partners under the name of Kesterson Box Company.

that this Local Union desires revisions and amendments in the working agreement.

This will also serve to give you the notice required in the contract of our desire for a general wage increase.

On February 7, 1944, the Company acknowledged receipt of the IWA's notice, and on February 23, 1944, the IWA, through its International Negotiating Committee, and "in accordance with the termination and revision clause of the working agreement which exists between your Company and the Local Union of the IWA," sent the Company a list of 10 points in the contract which it desired to revise. These 10 points cover most of the substantial elements of the contract. There followed an interchange of letters in an effort to arrange a meeting, but no conference took place between the IWA and the Company until the latter part of 1944. During this correspondence, the parties continued to abide by the terms of the contract and the IWA sought to continue the contract pending negotiations. The Company at first seemed to agree, but on July 14, 1944, it definitely asserted that the January 29 and the February 23 notices by the IWA to the Company completely nullified the agreement.

After a work stoppage in July 1944, disputes between the Company and the IWA relating to maintenance of membership and vacations were referred to the West Coast Lumber Commission. On September 8, 1944, that commission issued a directive stating:

The collective bargaining agreement dated January 27, 1944, as amended by and pursuant to past orders of the West Coast Lumber Commission and National War Labor Board shall be extended until the negotiations of a new collective bargaining agreement, or failing agreement, until the West Coast Lumber Commission by order decides any issue still in dispute by the parties.

On appeal by the IWA, the National War Labor Board, on December 18, 1944, affirmed the directive of the West Coast Lumber Commission. The Company and the IWA are still in disagreement concerning the 10 points in the original contract which the IWA first sought to revise, and a proceeding is now pending before the National War Labor Board involving these 10 points.

The IWA contends that, because of the continued negotiations and by force of the September 8, 1944, directive of the West Coast Lumber Commission, the January 27, 1944, contract is still in full force and effect and therefore constitutes a bar to a present election.

Since the letter of January 29, 1944, was sent by the IWA to the Company more than 60 days prior to the expiration date of the contract, and the February 23, 1944, list of changes desired was sent

more than 30 days prior to the expiration date, it is clear that renewal of the agreement for an additional year was forestalled. Assuming that the subsequent negotiations between the IWA and the Company served to continue the agreement in existence by virtue of clause (b), of Article XV of the contract, or that the West Coast Lumber Commission directive of September 8, 1944, had the effect of continuing the agreement in force, in either event the contract, at best, is of indefinite duration and has been operative for more than a year. Accordingly, it does not constitute a bar to a present determination of representatives.³

A statement of a Board agent, introduced into evidence at the hearing, indicates that the AFL represents a substantial number of employees in the unit hereinafter found appropriate.⁴

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

We find, in accordance with the stipulation of the parties, that all production and maintenance employees of the Kesterson Lumber Corporation, and of Irving E. Kesterson and W. I. Kesterson, doing business as Kesterson Box Company, excluding clerical employees and all supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of em-

³ See *Matter of Ben Sadoff, Arthur Sadoff and David Nemschoff, d/b/a Ben Sadoff Iron & Metal Company*, 58 N. L. R. B. 1574

In its brief, the IWA also urges that the pendency before the National War Labor Board of its dispute with the Company involving the 10 points listed in the letter of February 23, 1944, is a further ground which precludes a determination of representatives at the present time. The IWA apparently rests its position on the doctrine established in *Matter of Allis-Chalmers Manufacturing Company*, 50 N. L. R. B. 306. Inasmuch as, following its certification on December 8, 1942, the IWA completed a comprehensive proceeding before the National War Labor Board during the year 1943, in the course of which its disputes with the Company were fully resolved, and in accordance with the directive resulting therefrom it executed a written collective bargaining agreement with the Company in January 1944, it is clear that the present proceeding before the National War Labor Board was instituted at a time when the IWA had already concluded its initial bargaining program and was not a newly certified or recognized representative. Accordingly, we find no merit in its present contention.

⁴ The Field Examiner reported that the AFL submitted 62 application cards and that the names of 54 persons appearing on those cards were listed on the Company's pay roll, which contained the names of 219 employees in the unit hereinafter found appropriate. The IWA contends that the AFL has made an insufficient showing of representation and that the petition should therefore be dismissed. Although the January 27, 1944, contract did not set forth a maintenance of membership clause, the IWA and the Company understood that the West Coast Lumber Commission directive ordering the making of that contract authorized some form of a union security clause. The parties could not agree on the precise phrasing of the provision, but the IWA, on several occasions prior to July 1944, and once again thereafter, called upon the Company to discharge large numbers of employees for non-payment of union dues. The Company, in each instance, refused to do so, giving as its reason dissatisfaction with the IWA's method of proving the delinquency of its members. In view of the foregoing facts, we find no merit in the IWA's present contention regarding the AFL's showing of current interest.

ployees, 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 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 Kesterson Lumber Corporation and Irving E. Kesterson and W. I. Kesterson, doing business as Kesterson Box Company, all of Klamath Falls, Oregon, an election by secret ballot shall be conducted as early as possible, but not later than sixty (60) 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 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 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 Klamath Basin District Council, United Brotherhood of Carpenters and Joiners, affiliated with the American Federation of Labor, or by Local 6-12, International Woodworkers of America, affiliated with the Congress of Industrial Organizations, for the purposes of collective bargaining, or by neither.