

In the Matter of SILER MILL COMPANY *and* LUMBER AND SAWMILL WORKERS UNION, LOCAL No. 2519, AFL *and* INTERNATIONAL BROTHERHOOD OF FIREMEN AND OILERS, LOCAL UNION No. 193, AFL, PARTY TO A CONTRACT

Case No. 19-CA-270.—Decided January 29, 1951

DECISION AND ORDER

On September 26, 1950, Trial Examiner Thomas S. Wilson, issued his Intermediate Report in the above-entitled proceeding finding that the Respondent had not violated Section 8 (a) (1), 8 (a) (2), and 8 (a) (5) of the Act as alleged in the complaint, and recommending that the complaint against the Respondent be dismissed, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the General Counsel filed exceptions to the Intermediate Report and a supporting brief; Lumber and Sawmill Workers Union Local No. 2519, AFL, hereinafter called Local 2519, filed a brief in support of the General Counsel's exceptions to the Intermediate Report; and International Brotherhood of Firemen and Oilers, Local Union No. 193, AFL, hereafter called Local 193, and the Respondent each filed a brief in support of the Intermediate Report.

The Board¹ has reviewed the rulings of the Trial Examiner and finds that no prejudicial error was committed. The rulings are hereby affirmed.

The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in this case, and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, with the following additions and modifications:²

¹ 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-member panel [Members Houston, Reynolds, and Styles].

² We make the following corrections in the Trial Examiner's findings of fact by substituting the following for contrary statements appearing in the Intermediate Report: (1) There is a conflict in the testimony as to which employees operated the kiln at East Marginal Way before it was abandoned by the Respondent in 1941; (2) the Respondent and Local 2519 did not execute a bargaining agreement in 1950; (3) "charges" are placed in the present kiln by an employee who is a member of Local 2519 and also by another employee who is a member of the union representing the Respondent's box factory employees; (4) at its present location, the Respondent operates two planers, neither of which is situated in the box factory; (5) at the present time, lumber is not planed in the box factory before it is placed in the kiln; (6) the Respondent has done no commercial drying in its kiln;

1. We agree with the Trial Examiner's finding that the Respondent did not refuse to bargain with Local 2519 in violation of Section 8 (a) (5) of the Act. As is more fully detailed in the Intermediate Report, for a number of years before 1949, the Respondent operated both a sawmill and a box factory. Employees engaged in the sawmill operation were represented by Local 2519; employees in the box factory were represented in a different unit by another union. In September 1949, the Respondent completed the construction of a dry kiln and boiler, which it staffed with a chief engineer and four firemen. The Respondent thereupon, after receiving proof that Local 193 represented a majority of these employees, recognized it as the bargaining representative of the firemen. In October 1949, it executed a bargaining agreement with Local 193 covering these employees. In November 1949, Local 2519 sought recognition as the bargaining representative of the firemen, but the Respondent, citing its contract with Local 193, refused the request.

For the reasons stated below in paragraph numbered 2, we find that the Respondent did not render unlawful assistance to Local 193, or otherwise violate the Act, by executing the contract with Local 193. That being so, the Respondent's refusal to recognize Local 2519 for a unit of employees already covered by the contract with Local 193 would violate the Act only if we were to conclude that *at that time* a separate unit of the firemen was inappropriate, that only their inclusion in the unit of sawmill employees would have been appropriate, and that the Respondent's belief as to the appropriate unit was not based on good faith. But such a conclusion would be wholly unwarranted.

When the Respondent refused to deal with Local 2519 with respect to the firemen, a number of factors existed indicating that representation of the firemen in a separate unit was appropriate. These included: The fact that the Respondent's box factory and sawmill employees had already been organized into two separate units; the fact that industry custom with respect to the unit placement of firemen was inconclusive; the fact that the kiln operation was a separate division of the Respondent's operations, related functionally, and

(7) yard and sawmill employees are permitted in the boiler room to warm themselves, and the practice is not confined to the employees' lunch hour; (8) Cecil was shown four cards by which firemen applied for membership in Local 193, two of these were signed and two were delivered to Cecil by the firemen whose names appeared thereon; (9) Local 2519 represents all employees, including firemen, of five saw and planing mills which have kilns; (10) Local 2519 represents all employees, including firemen, of five other saw and planing mills which have boilers but no kilns; (11) Local 2519 also represents all employees, including firemen, of two companies which operate kilns, but do not operate saw and planing mills.

However, the foregoing corrections do not affect our concurrence in the result reached by the Trial Examiner in this case.

almost equally, to both the Respondent's sawmill and box factory operations; and the fact that this Board in numerous instances had established firemen, performing duties similar to those of the kiln firemen herein, in separate units.³

In addition, it must be noted that Local 2519, although aware of the construction and staffing of the kiln operation, had made no claim to represent the firemen until after the contract with Local 193 had been executed, and that, by that time, Local 2519 had lost whatever contractual right it may have had to represent the firemen.

Under all the circumstances, the Respondent's treatment of its firemen as employees entitled to separate unit representation appears to us to have been a reasonable action, and one which does not indicate a lack of good faith in bargaining.

2. We also agree with the Trial Examiner's conclusion that by executing the contract with Local 193 the Respondent did not violate Section 8 (a) (2) or 8 (a) (1) of the Act.

The General Counsel contends in his brief that, irrespective of any issue regarding an appropriate unit for the kiln firemen, the Respondent, by procuring and hiring the kiln firemen through Local 193 and thereafter contracting with that union without first giving Local 2519 an "equal chance" to supply such personnel as was needed, gave unlawful assistance and support to Local 193 in violation of Section 8 (a) (2), or, in the alternative, interfered with the right of its employees to choose their bargaining representative in violation of Section 8 (a) (1). In support of the latter contention the General Counsel argues that the principle of the *Midwest Piping* case⁴ should be here applied. We do not agree with these contentions.

It is true, as set forth in the Intermediate Report, that, at the Respondent's request, Local 193 supplied the Respondent with three of the four nonsupervisory firemen with whom it initially staffed its kiln operation; and that the Respondent did not request Local 2519 to supply firemen for the kiln operation. But these facts alone are insufficient to establish illegal assistance to Local 193, particularly when viewed in the light of other circumstances here present. Principal among these is the fact that a local ordinance required that the

³ We are aware of the recent decisions in which the Board held that only plant-wide units embracing all production and maintenance employees are appropriate in a logging and sawmill operation (*Weyerhaeuser Timber Company*, 87 NLRB 1076, decided December 16, 1949; *Nettleton Timber Company*, 87 NLRB 1319). However, these decisions were announced after the events here considered took place, and, as such, cannot form a basis either for measuring the appropriateness of a separate unit for the Respondent's firemen when that unit was brought into being, or for judging the Respondent's good faith in causing it to be established. Accordingly, we deem it unnecessary to pass upon the Trial Examiner's conclusion that the principle of the *Weyerhaeuser* case is not controlling here.

⁴ *Midwest Piping & Supply Co., Inc.* 63 NLRB 1060.

firemen working on the kiln operation be licensed. In requesting Local 193 to furnish the firemen, the Respondent thus turned to a source that was most likely to be in a position to satisfy its needs. Moreover, as the record shows, the Respondent had previously experienced some difficulty over the inability of Local 2519 to satisfy the Respondent's needs for skilled employees for its sawmill operations. Under such circumstances, and particularly since there is no showing whatever in the record that the Respondent made membership in Local 193 a prerequisite to the hiring of the firemen, we find that the Respondent did not violate Section 8 (a) (2) by procuring the kiln firemen from Local 193.⁵

Nor are we able to see any basis here for applying the doctrine of the *Midwest Piping* case. In the *Midwest Piping* case, the Board held that the execution of a contract with one of two competing unions while a question concerning representation was pending before the Board, interfered with the rights of employees under the Act. In this case, however, no question concerning representation had been raised either at the time the firemen were hired or at the time the contract was executed with Local 193. At the time of the hiring of the firemen, Local 2519 was not even a competing union, there then being no firemen over whom to compete; and at the time of the execution of the contract Local 2519 had not yet made any claim to represent the firemen, much less filed a petition with this Board. Accordingly, were the Board to follow the General Counsel's suggestion, it would be extending the doctrine of *Midwest Piping* so as to render unlawful the execution of a contract with a majority representative merely because at the time of the execution of such contract there may have existed a speculative possibility that another union might claim to represent the employees concerned. And this we are not prepared to do.

ORDER

Upon the entire record in the case and pursuant to Section 10 (c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the complaint issued herein against the Respondent, Siler Mill Company, Seattle, Washington, be and it hereby is dismissed.

⁵ Our holding that no violation of Section 8 (a) (2) was committed is confined to the express facts existing herein. By so holding, we do not decide whether, under other circumstances, the hiring of employees from a specific union, and thereafter executing a contract with such union without first notifying the incumbent, but different, union in the plant, would constitute a violation of the Act.

INTERMEDIATE REPORT

Robert E. Tillman, Esq., for the General Counsel.

Hulbert S. Murray, Esq., and *William S. Lubersky, Esq.*, of Seattle, Wash., for the Respondent.

George E. Flood, Esq., and *Clarence Lirhus, Esq.*, of Seattle, Wash., for Local 2519.

Kenneth A. MacDonald, Esq., and *Richard K. Pels, Esq.*, of Seattle, Wash., for Local 193.

STATEMENT OF THE CASE

Upon charges and amended charges duly filed on December 1, 1949, and June 15, 1950, by Lumber and Sawmill Workers Union, Local 2519, AFL, hereinafter called Local 2519, the General Counsel for the National Labor Relations Board, herein respectively called the General Counsel and the Board,¹ by the Regional Director for the Nineteenth Region (Seattle, Washington), issued a complaint dated June 16, 1950, alleging that Siler Mill Company, hereinafter referred to as the Respondent, had engaged and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (a) (1), (2), and (5) and Section 2 (6) and (7) of the National Labor Relations Act, as amended, 61 Stat. 136, hereinafter called the Act. Copies of the complaint and the various charges, together with a notice of hearing thereon, were duly served upon the Respondent, Local 2519, and International Brotherhood of Firemen and Oilers, Local Union No. 193, AFL, hereinafter called Local 193.

With respect to the unfair labor practices the complaint alleged in substance that: (1) The Respondent has refused, and continues to refuse, to bargain collectively with Local 2519 in violation of Section 8 (a) (5) of the Act, although said Local is the exclusive representative of the employees of the Respondent in the appropriate unit of Respondent's employees; (2) in or about the month of October 1949, by various enumerated acts and by executing a contract with Local 193 in particular, the Respondent has rendered illegal assistance and has interfered with the administration of said Local 193 in violation of Section 8 (a) (2) of the Act; (3) by reason of the afore-mentioned acts and various other enumerated acts, the Respondent has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed to them in Section 7 of the Act in violation of Section 8 (a) (1) of the Act.

The Respondent and Local 193 duly filed answers to said complaint wherein various allegations contained in the complaint were admitted but the commission of any unfair labor practice was denied.

Pursuant to notice, a hearing was held in Seattle, Washington, from August 22 through August 25, 1949, before the undersigned, the Trial Examiner duly designated by the Chief Trial Examiner. The General Counsel, the Respondent, Local 2519, and Local 193 were represented at the hearing. All parties participated in the hearing and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the conclusion of the case of the General Counsel the Respondent and Local 193 moved that the complaint be dismissed for failure of proof. This motion was denied at that time. Said parties renewed said motion at the conclusion of the hearing.

¹ The term General Counsel includes also counsel for the General Counsel appearing at the hearing.

On September 7, 1949, oral argument was held in Seattle, Washington, before the undersigned and participated in by all parties. The motion to dismiss was then taken under advisement and will be disposed of hereinafter.

Upon the entire record in the case, and from his observation of the witnesses, the undersigned makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Siler Mill Company, a Washington corporation, is engaged in the operation of a sawmill, planing mill, box factory, and dry kiln in the city of Seattle, State of Washington. In the course and conduct of its business at said location it has continuously shipped from its Seattle mill and factory to States and Territories of the United States other than the State of Washington lumber, boxes, and crates valued in excess of \$400,000 annually and has purchased for use in said operation a small percentage of its supplies and equipment other than logs from points outside of the State of Washington. All logs purchased for these operations are purchased within the State of Washington.

The undersigned finds that the Respondent is engaged in commerce within the meaning of the Act.

II. THE ORGANIZATION INVOLVED

Lumber and Sawmill Workers Union, Local No. 2519, AFL, and International Brotherhood of Firemen and Oilers, Local Union No. 193, AFL, are labor organizations admitting to membership employees of the Respondent.

III. THE UNFAIR LABOR PRACTICES

A. *The facts*

The predecessor of the present corporate Respondent² began operations in Seattle as a box factory on East Marginal Way about 1935. This operation was exclusively that of manufacturing boxes from boards. A few years thereafter the Jacob Siler Manufacturing Company began sawmill operations alongside the box factory in order to supply the necessary lumber for the operations of the box factory. Local 2635 of the Lumber and Sawmill Workers Union, affiliated with the Carpenters and Joiners of America, organized the employees of the box factory and secured a contract covering those workers from the predecessor of the Respondent. In 1940, after 3 years of negotiations, Local 2519 of the Lumber and Sawmill Workers Union, affiliated with the Carpenters and Joiners of America, secured recognition from the Respondent as the exclusive representative of the employees of the sawmill (as distinguished from the employees of the box factory) and in 1940 executed a contract covering the sawmill employees with the Respondent. Throughout the subsequent course of its history the Respondent has always recognized Local 2635 as the representative of the employees of the box factory and Local 2519 as the representative of the employees of the sawmill.

At all times during its operations at East Marginal Way until 1941 the Respondent operated a small, dilapidated dry kiln for the purpose of drying a part

² At the hearing counsel agreed that the numerous partnership and corporate changes occurring prior to the formation of the present existing corporation were immaterial to a determination of the instant case and, therefore, the undersigned will omit a description of these various formalistic changes in the Respondent's legal entity and consider the Respondent to have been the same entity since its formation in 1935.

of the lumber used in the manufacture of boxes. During its operation this kiln was heated with steam from a boiler which was operated indiscriminately by employees from the box factory and from the sawmill. The testimony was undisputed that the operators of the dry kiln were every "Tom, Dick and Harry" from the Respondent's operations. Because of its dilapidated condition the Respondent abandoned the use of this dry kiln in 1941 and thereafter dried the necessary lumber by storage in the open air.

On September 12, 1940, the Respondent and Local 2519 executed the standard form of contract negotiated between Local 2519 and Lumbermens Industrial Relations Committee, Inc., known as LIRC, for use in all sawmill operations in the Seattle area. This agreement by its terms between "Siler Box³ Sawmill Dept. Co." and Local 2519. The agreement recognized Local 2519 as the sole and exclusive bargaining agent "for all employees of the Employer except superintendent, foreman, log scaler (on water), truck drivers, shingle mill employees and office employees." Although this recognition clause would apparently cover the employees of the box factory except for the mention of "sawmill dept.," it is admitted by all parties that Local 2519 has always limited its activities to the employees of the sawmill and has never interfered with the jurisdiction of Local 2635 as the representative of the employees of the box factory. Throughout the complete bargaining history this distinction has remained sharp and clear.

In at least three clauses of this standard form contract executed between Local 2519 and the Respondent there is specific mention of "powerhouse men" or "firemen engine room, boiler room and fuel house attendants." However, prior to its abandonment in 1941, the Respondent had no regular employees operating the boiler and the kiln but continued to use employees from the sawmill or the box factory indiscriminately as they might be available. As found heretofore, it is uncontradicted on the record that "every Tom, Dick and Harry" in the Respondent's employ operated the kiln and boiler.

From 1940 to 1948 the Respondent and Local 2519 through an annual exchange of letters agreed upon the extension of the 1940 standard contract for the succeeding year. Wages were not included in this contract but were contained in a separate agreement. Although never a member of LIRC, the Respondent met the wage scale negotiated by LIRC at all times. In 1948, however, there was no such exchange of letters extending the 1940 agreement. Nor has there been since that date until sometime in 1950 when the parties formally entered into a new written agreement. However, despite the lack of formal written agreement both parties have proceeded as though such formal documents were in existence, i. e., Respondent has paid the wage increases negotiated from time to time by LIRC, has settled grievances with Local 2519, and has requested employees from Local 2519.

In 1946, this present corporate Respondent came into existence under the name "Siler Mill Company."⁴

In 1947, after its lease on the property located on East Marginal Way had been terminated, the Respondent purchased a 5-acre tract of land on West Marginal Way where it constructed a new sawmill and a new box factory. About November of that year the Respondent moved its operations to this new site where it has remained ever since. Subsequently in 1948, the Respondent purchased a small tract of land adjoining this new site where, in May or June 1949 with assistance of funds provided by the Reconstruction Finance Corporation, the

³ At this time the Siler Box Company was the name used by the Respondent's predecessor.

⁴ Another name used by Respondent's predecessor.

Respondent began construction of the dry kiln and boiler which is the situs of the present controversy.

Among the persons hired for the construction of the boiler and dry kiln were one Hines, a member of Local 193, and Leonard Erickson, nonunion. The Respondent employed Hines upon the recommendation of the Moore Dry Kiln Company and at the suggestion of George Sant, a part-time organizer for Local 193. Both men were hired for construction work. On one occasion during this construction work Erickson went to Local 2519 to see if it were necessary for him to join Local 2519 but was told by its president to wait and see if his job was to be permanent before actually joining the Union. He therefore did not join.

Construction work on the boiler and dry kiln was completed about the middle of September 1949 and it went into operation soon thereafter. This project consisted of a dry kiln, 88 feet long, 30.5 feet wide, and 10 feet high, capable of drying 88,000 feet of lumber at one time and a boiler room used exclusively to supply heat for the kiln located 6 feet distant therefrom. Both buildings were constructed on the tract of land purchased subsequently to the purchase of the original 5-acre tract. The boiler is used exclusively for providing heat for the dry kiln. The power used in both the sawmill and the box factory is secured from sources other than this boiler. Thus mechanically the dry kiln operates absolutely independently from the sawmill and box factory. The sawmill and box factory may be closed down while the kiln continues to operate and vice versa.

In its application to the RFC for the loan making the construction of the dry kiln and boiler possible the Respondent suggested the possibility that it might engage in custom drying, i. e., drying lumber belonging to third parties for a fee. However since its construction the Respondent has used the dry kiln almost exclusively for drying lumber to be used in its own operations and manufactured by it. If the Respondent chose to engage in custom drying, the dry kiln would be completely independent of the sawmill and the box factory both mechanically and otherwise.

When the dry kiln was ready for operations, Cecil, assistant manager and vice president of the Respondent, made Hines the chief engineer as he held the necessary license for such a position from the city of Seattle which, by ordinance, required boiler room operators to be licensed by the city, and further delegated the hiring of the necessary personnel to operate the boiler 24 hours per day to him suggesting only that he try to use Leonard Erickson on the operation. With assistance from Hines and officials of Local 193, Erickson succeeded in securing the necessary license from the city of Seattle to operate the boiler and was thereupon employed as a fireman. He also joined Local 193. Hines then secured three other firemen through Local 193 and the boiler room was staffed.

In its new location the Respondent has located two planers in the box factory where the planer operators are represented by the Boxmakers Local, Local 2635, and one planer in a shed outside of the box factory where the planer operator is represented by Local 2519.

In its present location the Respondent dry kilns about 40 percent of the lumber which it later uses in the manufacture of its boxes, due to the fact that it does not have sufficient storage space to air dry the lumber. There seems to be no definite procedure by which the lumber reaches the kiln as some of the lumber dried is dried directly from the sawmill in rough form, some after being planed in the planer shed, and some after having been planed by the planer in

the box factory. Some of the lumber dry kilned is sold as lumber, rough or planed, and some of it is used by the box factory in the manufacture of boxes.

Thus far the Respondent has done little, if any, commercial dry kiln work despite the possibility that such work would be done in its application to the RFC for the construction of the kiln.

When the dry kiln went into operation about the middle of September 1949, Local 193 presented Assistant Manager Cecil who has charge of labor relations for the Respondent with a proposed agreement covering the firemen and kiln operators there employed. These firemen spend their whole time operating, regulating, and maintaining the boilers. They work three 8-hour shifts 7 days a week. Four operators are so employed excluding the chief engineer who also works a full shift and, incidentally, has charge of hiring the personnel necessary for the operations of the boiler room. He has the power to discharge. By reason of an ordinance of the city of Seattle, firemen on the boilers must have a fourth grade license to operate these boilers. This license is secured by passing a test based on theory and experience in the handling of boilers. By this same ordinance such boiler firemen are not allowed to be absent from the boiler room for more than 20 minutes at a time. In addition to their duties in the boiler room the firemen on the third shift also act as night watchmen at the plant punching time clocks throughout the storage yard, box factory, sawmill, and kiln. The employees in the other divisions of the Respondent's operations only work two 8-hour shifts per day. These last employees are permitted in the boiler room only during the lunch hour when necessary to warm themselves. Thus far there has been no interchange of boiler room personnel with any of the other employees of the Respondent's other divisions. Nor is it likely that there will be in view of the requirement of the ordinance of the city of Seattle requiring a license to operate the boilers.

When lumber is to be dried in a kiln, a yard employee covered under the contract of Local 2519 places the charge of wet lumber in the kiln by means of lift trucks and then seals the door. Thereafter the boiler room fireman regulates the valves as required to send the necessary heat into the kiln for the drying process. When completed the boiler room fireman closes down the heat and the yard employee removes the dried charge. The fireman and the yard employee both receive their instructions regarding the placing and removal of the charge in the kiln from either the assistant manager or the yard foreman. When the drying is completed the fireman so informs the assistant manager or the yard foreman who then gives orders to a yard employee for the removal of the charge.

Although Cecil was presented with the proposed contract of Local 193 sometime in the middle of September 1949, he did not actually sign that contract until the first or middle of October 1949. On one or the other of these dates Cecil demanded proof that Local 193 actually represented the employees of the boiler room and was shown the signed application cards of all five of the then firemen. After deleting one paragraph from the standard form contract used by Local 193 because it was thought to be illegal under the terms of the Act, Cecil executed the agreement with Local 193 sometime between the 1st and 15th of October, 1949.

Sometime after the execution of the contract between the Respondent and Local 193 at a meeting held in the boiler room among Jorgensen, Thomas Bernard, business agent of Local 193, and the boiler room firemen on or about November 9, 1949, Jorgensen succeeded in securing the signed application cards for membership in Local 2519 from all of the boiler room firemen. There is

some evidence in the record that these signatures were secured by means of threats that the firemen would be unable to retain their positions unless they were members of Local 2519 but the undersigned believes this evidence to be immaterial here.

On or about November 17, 1949, E. C. Jorgensen, business agent for Local 2519, presented the Respondent with a proposed agreement on behalf of Local 2519. Cecil agreed to look it over. A few days thereafter Cecil informed Jorgensen that he could not sign the agreement unless the box factory employees and the boiler room firemen were expressly excluded from the coverage of the agreement. Jorgensen agreed that it had never been the intention of Local 2519 to cover the box factory employees but refused to exclude the firemen, contending that they had always been covered under the contract of Local 2519, not only at the Respondent's plant but throughout the industry. Cecil refused to execute the contract without the express exclusion of the firemen on the grounds that the Respondent already had signed an agreement with Local 193 covering these employees.

The Respondent has never been, and is not now, a member of LIRC and so is not bound by any agreement which LIRC may have made with Local 2519 although, as a matter of fact, the Respondent has always paid the same wages and has granted equal employment conditions to its employees as negotiated between LIRC and Local 2519. In fact so far as the record shows the Respondent has had an excellent history of labor relations having been the first, and only, mill to settle with Local 2519 during the industry-wide strike of 1945.

B. Conclusions

During the argument the General Counsel and the attorney for Local 2519 contended that the Respondent had no authority to bargain with Local 193 on behalf of the firemen as those employees were specifically covered under Respondent's agreement with Local 2519 and, in addition, because the Respondent knew that it was customary in the industry for the firemen to be included under the jurisdiction of Local 2519. They then argue that it constituted a violation of Section 8 (a) (2) for the Respondent under these conditions to bargain with any representative except Local 2519 regarding the firemen and that the bargaining and execution of a contract with Local 193 constituted unlawful assistance to Local 193. It was also argued that the only independent 8 (a) (1) allegedly committed by the Respondent consisted of the Respondent's bargaining with Local 193 while knowing that Local 2519 claimed jurisdiction over such employees thus bringing into play a slight variation of the *Midwest Piping* doctrine.⁵

Admittedly the alleged violations of both Section 8 (a) (1) and (2) stand or fall upon the question of whether the firemen in fact were covered under the contract of Local 2519 or were an integral part of the industrial unit for which Local 2519 was the recognized bargaining agent.

Likewise it is admitted that the 8 (a) (5) charge depends upon the finding on the identical question of the appropriateness of a unit of firemen because the Respondent's refusal to bargain with Local 2519 on behalf of the firemen is clear and unmistakable if the firemen are to be considered a part of the industrial unit as it was also stipulated that Local 2519 represented a majority of the employees in the unit represented by it even if the firemen are included therein. Therefore,

⁵ 63 NLRB 1060.

this whole case depends upon whether or not the firemen are a constituent part of the unit of sawmill employees represented by Local 2519. Counsel for Local 2519 has argued strenuously that the lumber industry is a single industrial unit and that, as a part of the lumber industry, the dry kiln is an essential part of the industrial unit constituting the employees of the sawmill.

Therefore we will turn to the crucial issue in this case, namely, whether or not, under the facts of this particular case, the firemen are covered by the agreement of 1940 and the extensions thereof or, on the other hand, are embraced as an integral part of the industrial unit required in the lumber industry.

Regarding the inclusion of the firemen under the terms of the 1940 contract, it is true that that contract specifically mentions "watchmen, firemen engine room, boiler room and fuel house attendants" in no less than three places therein. However, subsequent to 1941 the Respondent had no such employees in its employ and, while the kiln was operating up until 1941, it is admitted that every "Tom, Dick and Harry" operated in the boiler room regardless of whether he was technically an employee in the box factory or in the sawmill. The contract executed was a standard form of contract to be used in all operations covered by Local 2519 so that all possible classifications of employees were covered by the terms of that standard form. Furthermore, there was no extension of the 1940 agreement for the years 1948-49, and subsequent thereto, until an entirely new agreement was entered into between Local 2519 and the Respondent during the year 1950. Thus the undersigned does not believe that the 1940 contract and its extensions make the firemen in a then non-existent operation an integral part of the unit represented by Local 2519.

Next it is argued that by the custom and practice in the industry, and particularly by the custom and practice of Local 2519, the employees of a dry kiln have always been considered to be a part of the unit of sawmill employees rather than of the unit composed of the employees of the remanufacturing division. True, the evidence does show that Local 2519 has always claimed jurisdiction over the boiler room firemen in the four other operations having kilns over which Local 2519 had bargaining rights in the Seattle area. However, the customs and practices of Local 2519 whose geographical jurisdiction extends to but a portion of King County, State of Washington, does not establish the custom and practice in the industry. In fact in a few other lumber concerns over which Local 2519 did not enjoy bargaining rights in King County and which employed firemen, Local 193 itself actually had contracts covering the powerhouse and boiler room employees while the rest of the employees were represented by other locals affiliated with the Lumber and Sawmill Workers Union. Recently, in fact, through a gentleman's agreement reached between Local 193 and representatives of locals of the Lumber and Sawmill Workers Union other than Local 2519, these other locals ceded jurisdiction over such firemen to Local 193 where that Union had petitioned the Board for certification in such a unit. Thus the custom and practice referred to appears strictly limited to the practice and custom of Local 2519 and not of the industry itself. In fact, it appears that Local 193 enjoys bargaining rights on behalf of firemen employed in at least half of the lumber concerns having kilns in the Seattle area excluding box manufacturers.

Discarding this custom-and-practice argument there seems to be no valid reason, based on production practices or any other considerations, in this particular case why the kiln and boiler room employees should be considered a part of the sawmill unit any more than that of the box factory unit. The charge

to be dried arrives at the kiln from either the sawmill or the box factory depending upon which division happened to have performed the planing or trimming operation on the lumber just prior to introduction into the kiln. The kiln is no more necessary to the efficient operation of the sawmill than it is to the box factory. The kiln appears completely independent of both although it appears from the use of the kiln for drying material later to be manufactured into boxes that it is ancillary to the box factory, if to either. It is argued, however, that Local 2635, the box factory local, has made no claim to these kiln employees and therefore this argument should be disregarded. However, this argument does not go to the question of the appropriateness of joining the kiln employees to the sawmill or to the box factory unit.

The dry kiln is a separate organization under a chief engineer reporting directly to the assistant manager of the Respondent. The dry kiln can operate whether or not the sawmill or the box factory operates. The boiler room supplies power and heat to the dry kiln exclusively. If and when the Respondent decides to do custom drying, the dry kiln will be a completely independent unit, or division, of the Respondent's operations totally separated from the Respondent's other operations. There is no interchange of employees between the sawmill and boiler room or the box factory. The skills of the employees in each division are totally different. There is extremely little, if any, contact even between the different groups of employees. Even in the Respondent's accounting system, the dry kiln is treated as a separate unit from the other portions of the plant. In all physical senses as well as production senses, the dry kiln is a separate and distinct unit of the Respondent's operations.

Even the bargaining history of the different divisions are completely separate. When the move was made to the new location on West Marginal Way, no provision was made for the establishment of the dry kiln or boiler. In fact an additional tract of land had to be purchased for the erection of the dry kiln a year or more subsequent to the original move. The whole history of bargaining, both before and after the move, discloses that the sawmill and the box factory have always been separate and distinct units. As disclosed heretofore, despite the inclusion of the words firemen and boiler room operators in the 1940 contract, it is obvious from the facts of the case that the kiln operators were never included under the 1940 contract or in its extensions simply because there were no such employees in the Respondent's employ during the time that contract and its extensions were in force and effect. The whole history of the venture of the dry kiln and boiler indicate that it is a separate and distinct division in the Respondent's operations and not attached to either one or the other of its previous divisions.

However it is strenuously argued from the recent decision of the Board in the *Weyerhaeuser Timber Company (Springfield Lumber Division)*⁹ case that the lumber industry is now determined to constitute one industrial unit and, therefore, the firemen should be attached to the sawmill unit by accretion as it were. The General Counsel's representative even goes so far with this theory as to deny to the firemen any say as to who should represent them. The General Counsel contends that the wishes of the firemen in this regard were rendered immaterial by the determination that the lumber industry was, in fact, an industrial unit. The undersigned does not believe that the *Weyerhaeuser* case is determinative of the issues here in view of the fact that, since the beginning of its industrial history, the Respondent's plant has been broken into two craft

⁹ 87 NLRB 1076.

units, i. e., the sawmill unit and the box factory unit. To these two units, or divisions, of the Respondent were added a third in 1949, namely the dry kiln and the boiler room. In history and in fact the boiler room and dry kiln under the peculiar circumstances of this case is a completely separate and independent division of the Respondent's operations and the employees employed in this division are separated in history and in fact from the employees of the other divisions. The undersigned believes that the peculiar circumstances existing here warrant a different treatment for the employees in the boiler room than they were afforded in the *Weyerhaeuser* decision. The undersigned believes this case to be unique.

For all the reasons above stated, the undersigned is constrained to hold that the firemen employed in the boiler room and dry kiln of the Respondent constitute a unit appropriate for collective bargaining and are not necessarily an integral part of the unit comprised of the employees of the sawmill.

In view of this finding by the undersigned it is apparent that the Respondent had a right to negotiate with Local 193 as the representative of the employees of the boiler room and dry kiln and, therefore, has not refused to bargain with Local 2519 nor, in fact, committed any unfair labor practices.

In view of the undersigned's finding regarding the appropriateness of the unit composed of the firemen employed in the boiler room at the Respondent's plant, it naturally follows that the allegations of violations of Section 8 (a) (1), (2), and (5) fall and, therefore the undersigned will recommend that the complaint in its entirety be dismissed.

As provided in Section 203.46 of the Rules and Regulations of the National Labor Relations Board any party may, within twenty (20) days from the date of service of the order transferring the case to the Board, pursuant to Section 203.45 of said Rules and Regulations, file with the Board, Washington 25, D. C., an original and six copies of a statement in writing setting forth such exceptions to the Intermediate Report or to any other part of the record or proceeding (including rulings upon all motions or objections) as he relies upon together with the original and six copies of a brief in support thereof; and any party may, within the same period, file an original and six copies of a brief in support of the Intermediate Report. Immediately upon the filing of such statement of exceptions and/or briefs, the party filing the same shall serve a copy thereof upon each of the other parties. Statements of exceptions and briefs shall designate by precise citation the portions of the record relied upon and shall be legibly printed or mimeographed, and if mimeographed shall be double spaced. Proof of service on the other parties of all papers filed with the Board shall be promptly made as required by Section 203.85. As further provided in said Section 203.46 should any party desire permission to argue orally before the Board, request therefor must be made in writing to the Board within ten (10) days from the date of service of the order transferring the case to the Board.

In the event no Statement of Exceptions is filed as provided by the aforesaid Rules and Regulations, the findings, conclusions, recommendations, and recommended order herein contained shall, as provided in Section 203.48 of said Rules and Regulations, be adopted by the Board and become its findings, conclusions, and order and all objections thereto shall be deemed waived for all purposes.