

In the Matter of BEATTY LOGGING Co. and KLAMATH BASIN DISTRICT  
COUNCIL LUMBER & SAWMILL WORKERS, LOCAL 2705, A. F. OF L.

*Case No. 19-R-1395.—Decided June 9, 1945*

*Mr. C. L. Irving*, of Klamath Falls, Oreg., for the Company.  
*Mr. J. G. Wolf*, of Medford, Oreg., and *Mr. Hugh R. Haddock*, of Klamath Falls, Oreg., for the AFL.  
*Mr. George Brown*, of Portland, Oreg., for the CIO.  
*Miss Frances Lopinsky*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Klamath Basin District Council Lumber & Sawmill Workers, Local 2705, A. F. of L., herein called the AFL, alleging that a question affecting commerce had arisen concerning the representation of employees of Beatty Logging Co.,<sup>1</sup> Klamath Falls, Oregon, herein 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 December 11, 1944. The Company, the AFL, and International Woodworkers of America, Local No. 6-12, CIO, herein called the CIO, 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. At the hearing, the CIO moved the dismissal of the petition on the grounds that had it not been for the intervention of the AFL on two separate occasions, a contract between the Company and the CIO would have been in effect. For reasons hereinafter given, the motion is hereby denied. The Trial Examiner's rulings made at the hearing are free from prejudicial error

<sup>1</sup> At the hearing upon motion of the Company the name of the Company as it appears in the pleadings was corrected as above

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

Beatty Logging Co., a copartnership,<sup>2</sup> maintains offices at Klamath Falls, Oregon, and logging operations near Beatty, Oregon. All logs cut by the Company are sold by it to mills at Klamath Falls, Oregon, which convert the logs into finished lumber and lumber products, almost all of which is shipped to points outside the State of Oregon. The Company produces about 5,000,000 board feet of logs a month.

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 Lumber & Sawmill Workers, Local 2705, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

International Woodworkers of America, Local No. 6-12, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

#### III. THE QUESTION CONCERNING REPRESENTATION

On October 1, 1943, as a result of a consent election, the CIO was designated as collective bargaining representative for employees of the Company. Thereafter, the Company and the CIO entered into negotiations for a collective bargaining contract. In February 1944, the AFL filed a petition for investigation and certification of representatives which the Board on March 29, 1944, dismissed as premature in view of the CIO's recent designation.<sup>1</sup> The Company and the CIO then resumed negotiations, which had been interrupted by the representation proceeding. An oral agreement was finally reached and reduced to writing. The Company, however, refused to sign the contract because of typographical errors therein. On September 2, 1944, the AFL filed its petition herein and the Company, for that reason, refused to sign the contract. The CIO contends that its unsigned agreement is a bar to a present determination of representatives because, it

<sup>2</sup> Prior to January 1, 1944, the Company operated as a copartnership under the name Beatty Logging Company. On January 1, 1944, the copartnership was succeeded by a corporation, Beatty Logging Company, Inc., which operated until March 1, 1944, when it was in turn succeeded by the present copartnership. The operations and the employees involved herein are the same as those involved in *Matter of Beatty Logging Company, Inc.*, 55 N. L. R. B. 810, and *Matter of Beatty Lumber Company*, 19-R-1187, involving a consent election conducted by a Board agent on September 13, 1943.

<sup>1</sup> 55 N. L. R. B. 810.

alleges, its failure to obtain an executed contract is directly attributable to the two petitions filed by the AFL. We find no merit in this contention. In *Matter of Eicor*,<sup>4</sup> we established the policy, to which we have since firmly adhered, that an oral contract is no bar to a determination of representatives. That principle is herein applicable. The CIO does not in this case establish any such equitable claim to remain undisturbed as has been recognized by us in *Matter of Allis-Chalmers* and related cases.<sup>5</sup> Although the pendency of the February petition operated to delay negotiations, the CIO remained the statutory bargaining representative entitled to recognition as such, throughout the period when that petition was pending, a fact which the Board affirmed when it promptly dismissed the petition. The filing in September of the petition in this proceeding was not premature, inasmuch as nearly a year had then elapsed since the CIO had been designated by the Board as bargaining representative.<sup>6</sup> We find the unexecuted contract to be no bar to a present determination of representatives.

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.<sup>7</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

All parties agree that all production and maintenance employees of the Company, excluding supervisory and confidential employees and the camp clerk, constitute an appropriate unit. Except for the woods boss and woods superintendent whom all parties would exclude, the parties disagree as to what categories of employees should be excluded from the unit under the designation "supervisory." The CIO would include the cat foreman, the truck foreman, and the bull buck in the unit. The AFL takes no position as to the cat foreman and the truck foreman, but would exclude the bull buck. The Company would exclude all of the named categories from the unit.

Each of the named employees is in charge of a small crew, many of the members of which he has hired or recommended for hire. It appears that the authority of these employees to hire is based upon the present labor shortage and is not commonly exercised in normal times, but that even

<sup>4</sup> 46 N. L. R. B. 1035.

<sup>5</sup> *Matter of Allis-Chalmers Manufacturing Company*, 50 N. L. R. B. 306; see *Matter of Taylor Forge and Pipe Works*, 58 N. L. R. B. 1375, and cases cited therein.

<sup>6</sup> See *Matter of General Chemical Co.*, 48 N. L. R. B. 988, *Matter of J. M. Portela and Co.*, 61 N. L. R. B. 64.

<sup>7</sup> The Field Examiner reported that the AFL submitted 54 designation cards, 33 of which bore the names of persons listed on the Company's pay roll of September 1, 1944, which contained the names of 70 employees in the appropriate unit. The CIO relied upon its prior designation by the Regional Director as bargaining representative to show its interest in the proceeding.

then, no employee is placed in a crew without the approval of the head of the crew. The cat foreman, the truck foreman, and the bull buck perform physical labor; they are paid on an hourly rate. They are integral parts of their crews. Since we perceive no appreciable difference between the cat foreman, truck foremen, and bull bucks employed by the Company and the minor supervisory employees involved in *Matter of Coos Bay Lumber Company*,<sup>8</sup> recently decided by the Board, we shall include them within the appropriate unit.

We find that all production and maintenance employees of the Company, including the cat foreman, the truck foreman, and the bull buck, but excluding the camp clerk, all confidential employees, the woods superintendent, the woods boss, and other supervisory employees of equal and higher rank, 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 Beatty Logging Co., Klamath Falls, Oregon, 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 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 the 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

<sup>8</sup> 62 N. L. R. B. 93.

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 Lumber and Sawmill Workers, Local 2705 A. F. of L., or by International Woodworkers of America, Local 6-12, C. I. O. for the purposes of collective bargaining, or by neither.

Mr. GERARD D. REILLY, dissenting:

For the reasons stated in my dissenting opinions in *Matter of Coos Bay Lumber Company*<sup>9</sup> and *Matter of Packard Motor Car Company*,<sup>10</sup> I disagree with the inclusion of supervisory employees within the unit of rank and file maintenance and production employees.

---

<sup>9</sup> 62 N. L. R. B. 93

<sup>10</sup> 61 N. L. R. B. 4