

In the Matter of SMITH WOOD PRODUCTS, INC. and WILLAMETTE VALLEY DISTRICT COUNCIL, CHARTERED BY UNITED BROTHERHOOD OF CARPENTERS & JOINERS OF AMERICA, LOCAL UNION 2949, A. F. L.

. Case No. 19-R-1494.—Decided June 26, 1945

Mr. E. H. Card, of Coos Bay, Oreg., and Mr. R. A. Jeub, of Coquille, Oreg., for the Company.

Messrs. Reese Wingard and C. P. Richards, of Eugene, Oreg., for the A. F. L.

Mr. R. F. Kroeger, of Portland, Oreg., and Mr. Sam S. Truax, of Roseburg, Oreg., for the C. I. O.

Miss Katharine Loomis, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Willamette Valley District Council, chartered by United Brotherhood of Carpenters & Joiners of America, Local Union 2949, A. F. L., herein called the A. F. L., alleging that a question affecting commerce had arisen concerning the representation of employees of Smith Wood Products, Inc., Sutherlin, 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 Roseburg, Oregon, on March 20, 1945. The Company, the A. F. L., and International Woodworkers of America, Local 7-307, C. I. O., herein called the C. I. O., 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 C. I. O. made a motion to dismiss on the ground that the A. F. L. had not made a sufficient showing of representation. For reasons set forth in Section III, *infra*, the motion is denied.

The Trial Examiner's rulings made at the hearing are free from preju-

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dicial error 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

Smith Wood Products, Inc., is a Missouri corporation which has its principal office at Kansas City, Missouri, and its principal plant at Coquille, Oregon. It maintains a logging operation at Sutherlin, Oregon, which is solely involved in the instant proceeding. At this operation the Company cuts approximately 25 to 30 million board feet of logs a year. Eighty percent of the logs produced are sold to Sutherlin Timber Products, a separate company maintaining a mill at Sutherlin, and the remaining 20 percent is shipped to the Company's plant located at Coquille. The record shows that approximately 90 percent of the products of Sutherlin Timber Products and of the Company's plant at Coquille is shipped outside the State of Oregon.

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

II. THE ORGANIZATIONS INVOLVED

Willamette Valley District Council, chartered by United Brotherhood of Carpenters & Joiners of America, Local Union 2949, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

International Woodworkers of America, Local 7-307, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

Pursuant to a prior Board proceeding involving the employees of the Company at its Sutherlin logging operation,¹ the C. I. O. was certified in 1942 as their bargaining representative, and, on November 10, 1944, it entered into a bargaining agreement with the Company on their behalf. This agreement was to remain in effect until April 1, 1945, and from year to year thereafter in the absence of written notice to terminate given by either party at least 65 days prior to April 1 of any year. By a letter dated January 24, 1945, the A. F. L. notified the Company that it represented a majority of its employees at the Sutherlin operation and requested the Company to enter into collective bargaining relations. The Company replied by letter of February 8, 1945, denying the request and stating that, in view of its

¹ See *Matter of Smith Wood Products, Inc.*, 45 N. L. R. B. 787.

agreement with the C. I. O., it could not bargain with the A. F. L. until the matter had been settled by the Board. Since the Company received timely notice of the A. F. L.'s claim to representation, the bargaining agreement with the C. I. O. does not constitute a bar to the present proceeding.²

The C. I. O.'s motion to dismiss relates to the fluctuating number of the Company's employees.³ The motion is based on the promise that, considering the much larger number of employees engaged at peak production, the A. F. L.'s showing, made at the time of lowest production, is insufficient. A statement of a Board agent, introduced into evidence at the hearing, indicates that, about the time of the hearing herein, the A. F. L. represented a substantial number of employees in the unit hereinafter found appropriate.⁴ Inasmuch as the A. F. L. made a substantial showing among the employees then working and the number fluctuates, we have denied the motion to dismiss.

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 parties are in agreement that all employees of the Company employed in its logging operation at Sutherlin, Oregon, excluding the road engineer and clerical employees, constitute an appropriate unit.⁵ However, they disagree as to scalers, bull bucks, hook tenders, truck foreman, and shop foreman. The A. F. L. and the Company would exclude the four latter categories as supervisory, whereas the C. I. O. would include them. Contrary to the position of the A. F. L. and C. I. O., the Company would also exclude scalers as both supervisory and confidential.

The Company employs a superintendent who is in complete charge of the operation and an assistant superintendent who is in charge during his absence. The parties agree, and we find, that the superintendent and assistant superintendent are supervisory employees and should be excluded from the unit as such.

² See *Matter of Craddock-Terry Shoe Corp.*, 55 N. L. R. B. 1406, 1408.

³ The Company's complement of workers increases in May and June of each year and reaches its peak in July. In the fall, due to the difficulties of operating in inclement weather, the number of employees gradually decreases. The record indicates that at the time of the hearing the Company was at its lowest period of production and employed approximately 30 employees, whereas at peak production it employs 100 to 110.

⁴ The Field Examiner reported that the A. F. L. submitted 17 designation cards, that there were 30 employees in the alleged appropriate unit; and that the cards were all dated in January and February 1945. The record shows that 4 additional designation cards, dated during February 1945, were submitted by the A. F. L. at the hearing.

The C. I. O. submitted a copy of its bargaining agreement of November 10, 1944, as evidence of its interest.

⁵ In *Matter of Smith Wood Products, Inc.*, *supra*, the Board found appropriate a unit of "all camp and pond employees of the Company at Sutherlin, Oregon, including bull buckers, but excluding supervisory employees . . ." All parties in that proceeding were agreed that bull buckers should be included.

The truck foreman spends most of his time directing the drivers who work under him. At times when no driver is available he drives a truck. He has authority to hire and discharge the drivers. The shop foreman is responsible for maintaining the equipment used in the operation and he supervises the mechanics who work on the equipment. His authority to hire and discharge the employees who work under him is similar to that of the truck foreman. In each area⁶ in which logging is carried on there is a hook tender in charge of the man working on yarding machines and a bull buck in charge of buckers and fallers. The hook tenders and bull bucks have authority to recommend discharges of the men working under them to the superintendent who generally acts upon such recommendations. Bull bucks at times have hired men. The hook tenders and bull bucks perform some physical labor, but most of their time is spent in supervising others. Scalers compute the number of board feet of lumber cut by the buckers and fallers and it is upon their computations that the pay of the latter is based. Scalers do not direct the work of other employees nor have they authority to hire or discharge.

It is clear that the duties of scalers are in no manner supervisory. They do, in computing the amounts of board feet of lumber cut, gain information not known to other employees. However, access to such information is not sufficient to warrant their exclusion, since it does not relate to the Company's labor relations.⁷ We shall, therefore, include the scalers.

The record indicates that the truck foreman, shop foreman, hook tenders, and bull bucks possess supervisory functions with respect to other employees. However, for reasons stated in the recent *Coos Bay* case,⁸ we shall include those disputed categories in the unit.⁹

We find that all employees of the Company engaged at its logging operation at Sutherlin, Oregon, including the truck foreman, the shop foreman, hook tenders, bull bucks, and scalers, but excluding the road engineer, clerical employees, the superintendent, the assistant superintendent, and all other supervisory employees of the rank of camp foremen and above,¹⁰ 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.

⁶ The Company operates in only one area in the winter, whereas in the summer when the roads are in better condition it operates in two areas.

⁷ See *Matter of Creamery Package Company*, 34 N. L. R. B. 108

⁸ See *Matter of Coos Bay Lumber Company*, 62 N. L. R. B. 93

⁹ Among the disputed categories included in the unit in the *Coos Bay* case were truck foremen, bull bucks, hook tenders, and head mechanics. Head mechanics had functions and authority corresponding to those of the shop foreman in the instant case.

¹⁰ As in the *Coos Bay* case, we draw the line of demarcation at camp foreman. Apparently the assistant superintendent herein is comparable to the camp foremen mentioned in that proceeding.

The C. I. O. apparently wishes to postpone the election until the Company reaches full production in the summer and hires a full complement of workers, whereas the A. F. L. urges an immediate election. Under all the circumstances, we find that an election in the immediate future is appropriate. By the time an election can be conducted, the Company's Sutherlin logging operation, while not at peak production, will not be at the lowest production period, and a representative vote can then be had.¹¹

We shall, therefore, direct that the employees eligible to vote shall be those within 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.¹²

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 Smith Wood Products, Inc., Sutherlin, 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 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 they desire to be represented by Lumber and Sawmill Workers, Local No. 2949, A. F. L., or by International Woodworkers of America, C. I. O., Local Union 7-307, Roseburg, Oregon, for the purposes of collective bargaining.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Election.

¹¹ We note that no request to postpone the election was made in the last proceeding where the Direction of Election was issued in November, 1942.

¹² The A. F. L. requests that it be designated on the ballot as "Lumber and Sawmill Workers, Local No. 2949, A. F. L.," and the C. I. O. that it be designated as "International Woodworkers of America, C. I. O., Local Union 7-307, Roseburg, Oregon." The requests are granted.