

In the Matter of OCHOCO LUMBER COMPANY and LUMBER AND SAW-
MILL WORKERS UNION, CHARTERED BY UNITED BROTHERHOOD OF CAR-
PENTERS & JOINERS OF AMERICA, A F of L

Case No 19-R-1526 —Decided June 27, 1945

Mr. C. L. Irving, of Klamath Falls, Oreg , for the Company

Mr. Clarence E. Briggs, of Prineville, Oreg., *Mr Wilbur Yoeman*, of Klamath Falls, Oreg., and *Mr William Wedel*, of Bend, Oreg , for the A. F. of L.

Mr. George Brown, of Portland, Oreg , *Mr Joe Huber*, of Klamath Falls, Oreg., and *Mr. Howard Doorell*, of Prineville, Oreg., for the I. W. A

Mr. Louis Cokin, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Lumber and Sawmill Workers Union, chartered by United Brotherhood of Carpenters & Joiners of America, A F of L., herein called the A. F. of L., alleging that a question affecting commerce had arisen concerning the representation of employees of Ochoco Lumber Company, Prineville, 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 Prineville, Oregon, on April 19, 1945. At the commencement of the hearing, the Trial Examiner granted a motion of International Woodworkers of America, Local Union 6-200, C. I. O., herein called the I W. A , to intervene. The Company, the A. F. of L., and the I. W. A. appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. During the course of the hearing, the I. W. A. moved to dismiss the petition. The Trial Examiner reserved ruling thereon. The motion is hereby denied. 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.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Ochoco Lumber Company maintains logging and mill operations near Prineville, Oregon. All logs used by the Company at its mill are felled within the State of Oregon. The Company produces approximately 30,000 board feet of lumber annually, about 95 percent of which is shipped by it to points 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

Lumber and Sawmill Workers Union, chartered by United Brotherhood of Carpenters & Joiners of America, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

International Woodworkers of America, Local Union 6-200, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On January 29, 1945, the A. F. of L. requested the Company to recognize it as the exclusive collective bargaining representative of the employees at its logging camp and operations near Prineville, Oregon. The Company refused this request on the ground that it was under a contract with the I. W. A.

On October 1, 1943, the Company and the I. W. A. entered into an exclusive collective bargaining contract. The contract was to remain in effect until April 1, 1945, and from year to year thereafter, unless notice of a desire to terminate was given by either party thereto not less than 60 days prior to any annual expiration date. No such notice has ever been given. Inasmuch as the A. F. L.'s claim was made in timely fashion, we find that the contract does not constitute a bar to a present determination of representatives.

A statement of a Field Examiner of the Board, introduced into evidence at the hearing, indicates that the A. F. of L. represents a substantial number of employees in the unit hereinafter found to be appropriate.¹

¹ The statement shows that the A. F. of L. submitted 35 authorization cards bearing the names of persons who appear on the Company's pay roll of March 1, 1945. There are 122 employees in the appropriate unit. The A. F. of L.'s showing is substantial in view of the maintenance of membership clause in the Company's contract with the I. W. A. The I. W. A. did not present any evidence of representation, but relies upon its contract as evidence of its interest in the instant proceeding.

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 A. F. of L. urges that all production and maintenance employees in the woods and sawmill operations of the Company, including the shop foreman and the hog feeders, but excluding clerical employees, the bull buck, joint scaler, and supervisory employees, constitute an appropriate unit. The Company would exclude the shop foreman, hog feeders, joint scaler, and bull buck. The C. I. O. would include the bull buck, joint scaler, and shop foreman in the unit, but would exclude the hog feeders.

The bull buck supervises the fallers and buckers in the woods. He also scales logs and the fallers and buckers are paid upon the basis of his scale. The shop foreman is in charge of two or three employees working in the woods who are engaged in repairing automative equipment. Although he works along with his subordinates, he has the authority to hire and discharge. We shall include the bull buck and the shop foreman in the unit because of the custom of including such employees in bargaining units in the Northwest logging district.²

The joint scaler is employed jointly by the Company and the concern from which the Company purchases standing timber. The Company pays so much per board feet for the logs it purchases, based upon the scale of the joint scaler. The Company pays one-half of the joint scaler's salary and the remainder of his salary is paid by the vendor of the standing timber. We shall exclude the joint scaler from the unit, since his interests appear to be different from those of the other employees.

The Company employs two persons known as hog feeders. These employees pick up the scrap timber as it comes out of the mill and load it onto their own trucks. They then, as independent contractors, sell the scrap lumber for fuel. It appears that their work with the Company is merely incidental to their own business of distributing scrap lumber for fuel. We shall, accordingly, exclude them from the unit.

We find that all production and maintenance employees in the woods and sawmill operations of the Company, including the bull buck and shop foreman, but excluding clerical employees, joint scaler, part-time hog feeders, and all supervisory employees in woods operations of the rank of camp foreman or above, and all supervisory employees in other operations with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, 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.

² See *Matter of Coos Bay Lumber Company*, 62 N. L. R. B. 93.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by means of 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 Ochoco Lumber Company, Prineville, 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 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 Union, chartered by United Brotherhood of Carpenters & Joiners of America, A. F. of L., or by International Woodworkers of America, Local Union 6-200, C. I. O., for the purposes of collective bargaining, or by neither.

MR. GERARD D. REILLY, dissenting in part:

I disagree, for the reasons stated in my dissenting opinion in the *Coos Bay* case,³ with the conclusion reached by the majority that the bull buck and the shop foreman should be included in the unit.

³ 62 N L R B 93