

In the Matter of CHICAGO MILL AND LUMBER COMPANY *and* INTERNATIONAL WOODWORKERS OF AMERICA, CIO

*Case No. 15-R-1432.—Decided May 16, 1946*

*Mr. C. E. Daggett*, of Marianna, Ark., and *Mr. J. H. Dunn*, of Helena, Ark., for the Company:

*Mr. Robert Hill*, of West Helena, Ark., for the Union.

*Mr. Warren H. Leland*, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Woodworkers of America, C. I. O., herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Chicago Mill and Lumber Company, West Helena, Arkansas, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before John H. Garver, Trial Examiner. The hearing was held at Helena, Arkansas, on April 17, 1946. The Company and the Union 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.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Chicago Mill and Lumber Company, a Delaware corporation which maintains its principal office at 33 South Clark Street, Chicago, Illinois, operates plants in several States in the United States. This proceeding is

concerned solely with the Company's plant located at West Helena, Arkansas, consisting of a sawmill, lumber yard, box factory, veneer mill, and veneer dry kilns for the manufacture of lumber, veneer, and boxes. Annually the Company purchases raw material, valued in excess of \$1,000,000, of which approximately 75 percent is shipped from points outside the State or Arkansas to the West Helena plant. Annually the Company's West Helena plant sells finished products valued in excess of \$3,000,000, of which approximately 90 percent is shipped to points outside the State of Arkansas.

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

## II. THE ORGANIZATION INVOLVED

International Woodworkers of America is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.<sup>1</sup>

## III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of certain of its supervisory personnel until the Union has been certified by the Board in an appropriate unit.

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 Union seeks a unit of all foremen, excluding the box superintendent, night superintendent, power superintendent, dry kiln foremen or superintendent, and clerical supervisors. The Company takes no position with reference to the composition of the unit, but contends that it is inappropriate because supervisory employees are a part of management.

The contention of the Company has been considered in a number of previous cases. The Board has found,<sup>2</sup> as have the courts,<sup>3</sup> that the defini-

<sup>1</sup> Local No. 329 of the Union presently represents the production and maintenance employees at the West Helena plant, and has a contract with the Company covering such employees. Local No 419 has been granted a charter by the Union, and its membership is limited to supervisory employees of the Company.

<sup>2</sup> See *Matter of Soss Manufacturing Company, et al.*, 56 N L R B 348; *Matter of Packard Motor Car Company*, 61 N L R B 4, and 64 N. L. R. B. 1212; *Matter of The B. F. Goodrich Company*, 65 N. L. R. B. 294; *Matter of L. A. Young Spring & Wire Corporation*, 65 N. L. R. B. 298, *Matter of Simmons Company*, 65 N L. R. B. 984; *Matter of The Midland Steel Products Company*, 65 N L. R. B. 997; *Matter of Jones & Laughlin Steel Corporation*, 66 N. L. R. B. 386

<sup>3</sup> See *N. L. R. B. v. Armour and Company*, 154 F. (2d) 570 (C. C. A. 10, November 5, 1945); *Jones & Laughlin Steel Corporation v. N. L. R. B.*, 146 F. (2d) 833 (C. C. A. 5).

tions of "employer" and "employee" contained in the Act are not mutually exclusive; that a foreman, for example, is an "employer" when he acts in the interests of his employer, but is an "employee" when he acts in his own interest, as when he seeks to better the terms and conditions of employment. Inasmuch as the present proceeding covers the "employee" aspect of their dual relationship, we find that the foremen herein sought are employees within the meaning of Section 2 (3) of the Act,<sup>4</sup> and comprise an appropriate unit.

We find that all foremen employed by the Company at its West Helena, Arkansas, plant, excluding the box superintendent, night superintendent, power superintendent, dry kiln foreman or superintendent, and clerical supervisors, 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 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.<sup>5</sup>

#### 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 Chicago Mill and Lumber Company, West Helena, Arkansas, 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 Fifteenth 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 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

<sup>4</sup> See *Matter of California Packing Corporation*, 66 N. L. R. B. 1461; *Matter of The Texas Company*, 67 N. L. R. B. 452.

<sup>5</sup> As Local 419 of the Union appears to be more directly interested in this proceeding, we shall place it upon the ballot. If chosen by the employees in the appropriate unit as their bargaining agent, we shall certify Local 419.

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 or not they desire to be represented by International Woodworkers of America, Local 419, C. I. O., for the purposes of collective bargaining.

MR. GERARD D. REILLY, dissenting:

For the reasons stated in my dissenting opinion in *Matter of Packard Motor Car Company*, 61 N. L. R. B. 4, and *Matter of Jones & Laughlin Steel Corporation*, 66 N. L. R. B., 386, I am constrained to dissent from the majority opinion in this case.