

In the Matter of JOE HEARIN, LUMBER *and* LUMBER AND SAWMILL
WORKERS UNION LOCAL NO. 2795, A. F. OF L.

Case No. 19-C-1323

SUPPLEMENTAL DECISION

May 21, 1946

On March 28, 1946, the National Labor Relations Board, herein called the Board, issued a Decision and Order in the above-entitled proceeding,¹ in which it held that the respondent, Joe Hearin, Lumber, Ashland, Oregon, had not engaged in unfair labor practices within the meaning of Section 8 (1) and (5) of the Act, as alleged in the complaint, and ordered that the complaint be dismissed. Thereafter, on April 25, 1946, the Regional Attorney for the Nineteenth Region filed a motion with the Board, in which he requested that the Board reconsider said Decision and Order and issue a Supplemental Decision and Order either requiring the respondent to bargain with Lumber and Sawmill Workers Union Local No. 2795, A. F. of L., herein called the Union, or, in the alternative, clarifying the intent of the Board with respect to the cross-check procedure presently used by the Regional Offices. Thereafter, the respondent filed a statement in opposition to the motion of the Regional Attorney. Except to the extent indicated below, the motion is hereby denied.

As stated in our original decision, we do not believe that the type of card check conducted in this case in 1944 reflected the employees' true desires with respect to representation with the same degree of certainty as would an election by secret ballot conducted under the auspices of the Board in accordance with express statutory provisions. Accordingly, where a determination of representatives was made solely on the basis of such a card check, under our former procedure, and no additional measures were taken to insure that the card check reflects the employees' true choice, we are not inclined to accord to such determination the conclusive effect normally given to a certification of representatives after a Board-directed election or a determination of representatives based on a consent election.

¹ 66 N. L. R. B. 1276

68 N. L. R. B., No. 21.

The Regional Attorney contends, however, that under the procedure presently followed by the Regional Offices of the Board in cases of cross-check agreements, adequate safeguards are provided to protect employees in the exercise of their choice of a bargaining representative. Under this procedure, if it appears, as a result of the cross-check, that the union involved has been designated by a majority of the employees in the agreed unit, notices to that effect are posted on the employer's premises for a period of 5 days, during which the employees or any interested party can show cause to the Regional Director why he should not issue a Report on Cross-Check finding that the union has been designated and selected as the exclusive representative of the employees in the unit. At the conclusion of the 5-day posting period, if the Regional Director is of the opinion that no valid cause to the contrary has been shown, he issues his Report on Cross-Check, finding and determining that the union has been so designated and selected.

We perceive no valid reason for drawing any distinction between the procedure outlined above and our election procedures as a method of establishing employees' true desires. Had our present procedure been followed in the instant case, we might well have held that the Regional Director's determination that the Union was the exclusive representative of the respondent's employees was entitled to the same probative value as a Board-conducted election. However, the record does not indicate, nor does the Regional Attorney contend, that this procedure was followed in the present case, or that interested parties were afforded any opportunity to challenge the results of the cross-check before the Regional Director made his finding. On the contrary, the Agreement for Cross-Check entered into on March 15, 1944, by the respondent and the Union provided merely that:

The Regional Director shall, upon the completion of the cross-check, issue a Report on Cross-Check. If the Regional Director advises that the Union has been designated by the employees in [the agreed] unit, the Employer will recognize the Union as the exclusive representative of such employees for the purpose of collective bargaining.

Pursuant to said agreement, the Regional Director, on March 21, 1944, issued his Report on Cross-Check, in which he announced the results of the cross-check and found and determined that the Union had been designated and selected by a majority of the employees in the unit as the exclusive bargaining representative of the employees within the unit. In the circumstances of this case we perceive no grounds for reversing our former decision that in view of the clear and cogent evidence that in June 1944 a majority of the employees in the unit no longer desired representation by the Union and the complete absence of evidence that

the respondent had interfered with the employees' statutory rights, the respondent was justified in questioning the Union's majority status and in good faith refusing to continue negotiations for this reason, even though less than 4 months had elapsed since the time of the cross-check. Our decision is, however, limited to the facts of this case, and should not be construed as holding that a determination of representatives based on a cross-check may not, with the safeguards provided in our present procedure, be equivalent to a determination based on a Board-conducted election.