

In the Matter of GIUSTINA BROTHERS LUMBER CO. and INTERNATIONAL
WOODWORKERS OF AMERICA, LOCAL 5-246, C. I. O.

Case No. 19-R-1670.—Decided June 4, 1946

Messrs. E. Giustina and E. C. Trenholme, of Eugene, Oreg., for the Company.

Mr. A. F. Hartung, of Portland, Oreg., and *Mr. Max Gardner*, of Eugene, Oreg., for the C. I. O.

Mr. Doyle Pearson, of Portland, Oreg., and *Mr. W. O. Kelsay*, of Eugene, Oreg., for the A. F. L.

Mr. Phil E. Thompson, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Woodworkers of America, Local 5-246, C. I. O., herein called the C. I. O., alleging that a question affecting commerce had arisen concerning the representation of employees of Giustina Brothers Lumber Co., Blue River, Oregon, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Joseph D. Holmes, Trial Examiner. The hearing was held at Eugene, Oregon, on April 3, 1946. At the start of the hearing, the Trial Examiner granted a motion to intervene filed in behalf of Willamette Valley District Council, United Brotherhood of Carpenters & Joiners of America, Local 2611, A. F. L. herein called the A. F. L. The Company, the C. I. O., and the A. F. L. appeared and participated. At the close of the hearing, the A. F. L. moved to dismiss the petition. The Trial Examiner referred the motion to the Board. For reasons set forth in Section III (*infra*) the motion is hereby denied. 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

Guistina Brothers Lumber Co. is a partnership with its office and principal place of business located at Eugene, Oregon. The Company is engaged in sawmill operations at Eugene and Blue River, Oregon, and in logging operation at Lucky Bay and Gate Creek, Oregon. The Blue River Sawmill is the only operation involved in this proceeding. The Company produces between 32,000,000 and 36,000,000 board feet of finished lumber annually, all of which is shipped out of 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

International Woodworkers of America, Local 5-246, is a labor organization, affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

United Brotherhood of Carpenters & Joiners of America, Local 2611, is a labor organization, affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On December 5th and 15th, 1945, the C. I. O. wrote the Company requesting recognition as the exclusive bargaining representative for the employees at the Company's Blue River sawmill operation. On December 21, 1945, the Company wrote the C. I. O. refusing such recognition on the ground that the A. F. L. was the recognized bargaining representative of its employees.

The Company purchased the Blue River sawmill operation on December 1, 1945. On December 3, 1945, pursuant to a request for recognition by the A. F. L., a voluntary cross-check was conducted by a Company official and an A. F. L. representative.¹ Thereupon, the Company issued a notarized statement recognizing the A. F. L. as the exclusive bargaining representative of its "eligible employees at Blue River, Oregon." On December 5, 1945, before the Company and the A. F. L. had executed

¹ The cross-check was conducted in the Company's main office at Eugene. The results were verified by a Notary Public, and indicated that the A. F. L. submitted 12 authorization cards which were checked against the current Blue River mill pay roll of 18 employees.

any written bargaining agreement covering the Blue River operation, the C. I. O. wrote the Company demanding recognition as the exclusive bargaining representative for the Blue River employees and, on December 6, 1945, filed the petition herein. The Board has held that a recognition agreement alone does not bar a determination of bargaining representatives; wherefore, we reject the contention of the Company and the A. F. L. that the Company's written statement of recognition was tantamount to a Board certification and constitutes a bar to the C. I. O.'s claim for representation.²

The A. F. L. also contends that the bargaining agreement between the Company and the A. F. L. covering the Company's Eugene mill was extended to cover the Blue River mill, so as to create a contract bar to a present determination of representatives. We find no merit in this contention. Although the Company and the A. F. L., during contract negotiations following the afore-mentioned cross check, had agreed orally to follow most of the provisions of the Eugene contract, the record clearly indicates that they were at all times negotiating a separate agreement for the Blue River operation, and inasmuch as such a contract was unexecuted at the time of the C. I. O.'s demand for recognition and the filing of the petition herein, we find no contract bar to a present determination of a bargaining representative.³

A statement of a Board agent, introduced into evidence at the hearing, indicates that the C. I. O. represents a substantial number of employees in the unit hereinafter found appropriate.⁴

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 C. I. O. seeks a unit comprised of all production, maintenance and transportation employees in the Company's sawmill operation at Blue River, Oregon, excluding clerical employees and supervisory employees above the rank of foreman. The A. F. L. contends that the unit should include all of the Company's operations. The Company takes a neutral position with respect to the determination of the unit.

The Company is at present engaged in three lumbering operations located in the State of Oregon, to wit: the sawmill at Blue River involved herein, a sawmill and planing mill at Eugene, and logging operations

² *Matter of Henry Weis Manufacturing Company, Inc.*, 49 N. L. R. B. 511; *Matter of Corn Products Refining Co.*, 52 N. L. R. B. 1324, cf. *Matter of Radco Corporation of America*, 63 N. L. R. B. 235, and *Matter of American Marsh Pumps, Inc.*, 59 N. L. R. B. 1084.

³ *Matter of Beatty Logging Co.*, 62 N. L. R. B. 266.

⁴ The Field Examiner reported that C. I. O. submitted 12 authorization cards. There are approximately 18 employees in the appropriate unit.

at Gate Creek and Lucky Bay.⁵ There is no interchange of employees between these operations; the employees in each comprise a distinct and homogeneous group with separate supervision and different rates of pay, hours of work, and other conditions of employment. Inasmuch as there is no collective bargaining history of all the Company's employees in a single unit,⁶ we find that the unit petitioned for is appropriate.

We find that all production, maintenance, and transportation employees in the Company's sawmill operation at Blue River, Oregon, excluding clerical employees and supervisory employees above the rank of foreman and all other supervisory employees 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.

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.

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 Giustina Brothers Lumber Co., Blue River, 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 employees in the unit found appropriate in Section IV, above, who were

⁵ The Blue River mill is located approximately 50 miles from the Eugene mill, and approximately 8 and 30 miles from Gate Creek and Lucky Bay, respectively.

⁶ The employees at the Company's Eugene mill are represented by Local 2611, A. F. L., and the employees in the Company's logging operations are represented by another A. F. L. local. Both of these locals have consummated separate bargaining agreements with the Company, and, as heretofore mentioned, the Company and Local 2611 were negotiating a separate contract for the Blue River mill at the time the petition was filed herein.

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 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 they desire to be represented by International Woodworkers of America, Local 5-246, C. I. O., or by Willamette Valley District Council, United Brotherhood of Carpenters & Joiners of America, Local 2611, A. F. L., for the purposes of collective bargaining, or by neither.

CHAIRMAN HERZOG took no part in the consideration of the above Decision and Direction of Election.