

In the Matter of SWANSON BROTHERS LOGGING COMPANY, EMPLOYER
and LUMBER AND SAWMILL WORKERS, LOCAL NO. 2587, AFL,
PETITIONER

Case No. 19-RE-26.—Decided November 8, 1946

Mr. John Swanson, of Eatonville, Wash., for the Employer.

Mr. E. K. LaChapelle, of Seattle, Wash., and *Mr. Frank Suter*, of Mineral, Wash., for the AFL.

Messrs. William A. Babcock, Jr., and *George Brown*, of Portland, Oreg., and *Mr. E. O. Lohre*, of Tacoma, Wash., for the CIO.

Mr. A. Summer Lawrence, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

Upon a petition duly filed, hearing in this case was held at Tacoma, Washington, on July 15 and 16, 1946, before Benjamin B. Law, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. The CIO's motion to dismiss is hereby denied for reasons hereinafter stated.

Upon the entire record in the case, the National Labor Relations Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

Swanson Brothers Logging Company, herein called the Employer, is a partnership operated by John Swanson and Eric Swanson. The Employer is engaged in logging operations with its principal place of business at Eatonville, Washington. During the year 1945, the Employer logged approximately 25,000,000 board feet of timber, of which at least 75 percent was sold in interstate commerce. At the present time, the Employer is logging approximately 100,000 board feet per day, of which amount 50 percent is estimated by the Employer as entering interstate commerce. The Employer admits and we find that it is engaged in commerce within the meaning of the National Labor Relations Act.

St. Paul and Tacoma Lumber Company, herein called St. Paul, is engaged in logging and milling operations with its principal place of business at Tacoma, Washington. St. Paul has a written agreement whereby the Employer undertakes to log certain timber lands owned by St. Paul and to deliver at designated points the logs obtained therefrom to St. Paul for subsequent use by the latter in its own operations. The CIO, seeking to represent the employees of the Employer as part of St. Paul's group of employees now represented by the CIO, contends that St. Paul is a co-employer with the Employer of the latter's employees. The Employer, supported by the AFL, contends that it is an independent contractor and the sole employer of the employees herein concerned.

The CIO's contention that St. Paul is a co-employer with the Employer of the latter's employees is based primarily¹ upon the provisions of the logging contract between the Employer and St. Paul. Under the terms of this contract, St. Paul retains the right to terminate the logging operations of the Employer whenever it deems necessary "on account of fire hazard or economic reasons." In addition thereto, St. Paul is given sole authority to determine what timber shall be left standing or removed and is entitled to make periodic checks to approve or disapprove the manner of logging as conducted by the Employer. The Employer, on the other hand, is required to furnish all labor and equipment needed for the operation,² is specifically authorized to perform the logging operations in such manner as it may elect, and is paid for its services by the amount of lumber which it produces from its logging activities. There is, moreover, nothing in the contract or in the interpretation placed thereon by the parties,³ which entitles St. Paul either to control the labor relations of the Employer or to influence conditions of employment among the latter's employees.

¹ The CIO also contends that certain extraneous evidence establishes that St. Paul exercises such control over the Employer that the former may be considered as co-employer of the latter's employees. We are of the opinion that such evidence, relating for the most part to acquiescence by the Employer to St. Paul's insistence that the Employer cancel its contract with the AFL as a preliminary step in an attempt to adjust the present labor dispute, does not establish a right on the part of St. Paul to control the labor relations of the Employer or warrant a finding that St. Paul is a co-employer with respect to the Employer's employees.

² The record discloses that in practice the Employer owns all the equipment used and has its own group of employees most of whom have been with it on other operations over a period of years. It further appears that the Employer maintains these employees on its own pay roll; that it determines their hours and working conditions; that it pays their Social Security and other employment taxes; and that it does its own hiring, discharging, and supervising of such employees.

³ Although the record does not set forth the official position of St. Paul, which is not a party to the proceeding, the interpretation given by St. Paul to the Employer's operation under the contract as it relates to the subject of the Employer's employees is revealed in a letter dated February 15, 1946, from St. Paul to the CIO. The letter states that the Employer's operation "is not within the coverage of our contract with members of No. 2-9 and we therefore cannot legally participate, influence, or interest ourselves in Swanson Brothers labor relations."

The CIO contends that, notwithstanding the admitted absence of any right on the part of St. Paul to hire or discharge the Employer's employees or to supervise in detail the work performed by such employees, the economic dependence of the Employer upon St. Paul for the continuance of its logging operations and the integration of such operations with those conducted by St. Paul, give the latter sufficient control over the Employer to warrant the finding of a co-employer relationship between St. Paul and the Employer's employees. Although the Board has, in certain instances, considered the economic facts surrounding the relations between employers as bearing upon the finding of an over-all employer relationship,⁴ the basis for such a finding customarily has included some evidence of control with respect to the labor relations of the particular employer or the right to affect conditions of employment among the latter's employees.

In view of the foregoing considerations and upon the entire record in the case, we are not persuaded that St. Paul is a co-employer of the Employer's employees within the meaning of Section 2 (2) of the Act.⁵ Accordingly, we find that the Employer is an independant contractor and the sole employer of the employees herein concerned.⁶

II. THE ORGANIZATIONS INVOLVED

Lumber and Sawmill Workers, Local No. 2587, AFL, herein called the AFL, is a labor organization affiliated with the American Federation of Labor, claiming to represent employees of the Employer.

International Woodworkers of America, Local 2-9, CIO, herein called the CIO, is a labor organization affiliated with the Congress of Industrial Organizations, claiming to represent employees of the Employer.

III. THE QUESTION CONCERNING REPRESENTATION

The Employer refuses to recognize either the AFL or the CIO as the exclusive bargaining representative of employees of the Employer until one or the other organization has been certified by the Board in an appropriate unit.

The CIO contends that its existing contract covering employees of St. Paul is a bar to the present proceeding. Since we have found that St. Paul is not an employer of the employees herein concerned, we find

⁴ See *Matter of Stockholding Publishing Company, Inc.* 28 N. L. R. B. 1006, (*N. L. R. B. v. Hearst Publications*, 322 U. S. 111); *Matter of Boston Herald-Traveler Publications*, 70 N. L. R. B. 651; *Matter of The Houston Press Company*, 70 N. L. R. B. 660.

⁵ See *Matter of Canyon Lumber Company*, 59 N. L. R. B. 1312, *Matter of St. Louis Public Service Company and Transit Casualty Company*, 65 N. L. R. B. 775

⁶ Since we do not find that St. Paul is an employer within the meaning of the Act, we find that there is no merit to the CIO's contention that St. Paul should have been made a party to the present proceeding.

that the contract does not constitute a bar to a present determination of representatives.

We find that a question affecting commerce has arisen concerning the representation of employees of the Employer, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

The Employer and the AFL both assert that the appropriate unit should consist of all production, maintenance, transportation, and road construction employees of the Employer, excluding the timekeeper and supervisory employees. The CIO, although not opposing the composition of the unit claimed by the AFL, contends that the Employer's employees should be included in an over-all unit with the employees of St. Paul now represented by the CIO, and that a unit limited to the Employer's employees would be inappropriate.

In support of its position, the CIO urges that the practice of collective bargaining in the industry and the maintenance of stability in bargaining relations require a finding that only a multiple-employer unit including both the Employer's and St. Paul's employees is appropriate.⁷ In the absence of issue raised,⁸ or where it appears that there has been bargaining in the past upon a multiple-employer basis, the Board has found appropriate a multiple-employer unit similar to that sought here by the CIO.⁹ However, here issue has been raised, and the record clearly indicates not only that there has been no bargaining by the Employer upon a multiple-employer basis, but also that the Employer has for several years conducted its own labor relations and has bargained separately with respect to the employees herein concerned. In view of the foregoing, we are of the opinion that the record affords no basis for a multiple-employer unit, and that the employees of the Employer alone constitute a separate unit.¹⁰

We find that all production, maintenance, transportation, and road construction employees of the Employer, excluding the timekeeper and all or any 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.

⁷ The contention of the CIO that St. Paul is the employer of the Employer's employees has already been considered in Section I, *supra*.

⁸ See *Matter of S. A. Agnew, doing business as S. A. Agnew Lumber Company*, 44 N. L. R. B. 1253

⁹ The Board has in numerous instances recognized the appropriateness of multiple-employer units based upon a practice of joint action among employers. See *Matter of Standard Slag Company*, 63 N. L. R. B. 313, and cases cited therein.

¹⁰ See *Matter of Miami Daily News, Inc.*, 66 N. L. R. B. 663.

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with Swanson Brothers Logging Company, Eatonville, Washington, 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 Sections 203.55 and 203.56, of National Labor Relations Board Rules and Regulations—Series 4, 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 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 Lumber and Sawmill Workers, Local No. 2587, AFL, for the purposes of collective bargaining.¹¹

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

¹¹ The CIO is not accorded a place on the ballot since it has submitted no evidence of representation with respect to the Employer's employees.