

Section 2 (2) of the Act,² and that these office and clerical employees, apart from other employees, constitute an appropriate unit.³

Accordingly, we find that all office and clerical employees of Malden Electric Company and Malden and Melrose Gas Light Company, Malden, Massachusetts, in the commercial department, plant accounting department, maps and records department, outside collection department, and stores department, but excluding meter readers, production and maintenance employees, watchmen, guards, professional employees, and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

[Text of Direction of Election omitted from publication in this volume.]

² See *Florida Jafra Steel Co., et al.*, 94 NLRB 386; *Sellers Manufacturing Company, Inc.*, 93 NLRB 202; *Proximity Manufacturing Company*, 66 NLRB 1190.

³ *Mack Motor Truck Company*, 94 NLRB 719; *Minneapolis-Moline Company*, 85 NLRB 597.

WALTER G. BRIX, INC.¹ and INTERNATIONAL WOODWORKERS OF AMERICA, CIO, PETITIONER. *Case No. 20-RC-1370. September 27, 1951*

Decision and Direction of Election

Upon a petition duly filed under Section 9 (c) of the National Labor Relations Act, a hearing was held before Nathan R. Berke, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.²

Upon the entire record in this case, the Board finds:

1. The Employer is a corporation organized under the laws of the State of Washington and licensed to do business in California. On March 24, 1950, the Employer acquired a tract of timber at Brice-land, California, and in the early part of 1951 there began full production in both logging and sawmill operations. The Employer maintains no active operations outside the State of California.³

¹ The name of the Employer appears as amended at the hearing.

² The Employer moves to dismiss the petition upon the ground that it does not conform to the Board's Rules and Regulations because it does not state that the Petitioner requested recognition as bargaining agent of the employees involved and that the Employer refused such recognition. As the Employer at the hearing refused to recognize the Petitioner as bargaining agent of its employees, we find no merit in this contention. See *Grocers' Biscuit Company, Inc.*, 85 NLRB 602. We conclude that neither Section 9 (c) of the Act, section 102.53, subsection 7, of the Board's Rules and Regulations, nor section 3 of the Administrative Procedure Act requires dismissal of the petition.

³ The Employer formerly operated a logging business in the State of Washington. Since April 1951, the Employer has not been in active operation in Washington, but has maintained a part-time office to expedite the dissolution of the operation in that State. At present the activity in Washington is basically an effort to sell real estate and logging equipment. There are no employees connected with this activity; personnel consists of the Employer's president and general manager who spends 1 week of each month at this office.

During the fiscal year ending March 31, 1951, the Employer's purchases of sawmill and logging equipment approximated \$250,000. Of these purchases approximately 17 percent in value was shipped directly to the Employer from outside the State and 48 percent in value was purchased locally, but was manufactured outside the State.

Sales are made by the Employer to wholesalers located in northern California who instruct the Employer to ship directly to their retail lumberyard customers⁴ within the State of California. At the hearing evidence was taken regarding the five principal wholesalers to whom the Employer sells lumber. Of these five, two make annual sales outside the State, in excess of \$25,000: Tarter, Webster and Johnson of San Francisco, and Pacific Forest Products, Inc., of Oakland, California. Annually each ships out of the State lumber valued in excess of \$100,000. During the fiscal year April 1, 1950, to March 31, 1951, the Employer sold lumber valued at \$12,000 to Tarter, Webster and Johnson, and lumber valued at \$107,000 to Pacific Forest Products, Inc. From March 31, 1951, to June 31, 1951,⁵ sales to Tarter, Webster and Johnson amounted to approximately \$12,000 and to Pacific Forest Products, Inc., approximately \$45,000.⁶ From the evidence it appears that these figures are reasonably indicative of the minimum potential of the Employer for the current year.⁷ We find it reasonable, therefore, to project the sales figures for the first 3 months of business in order to determine the sales figure for a period of 12 months. The extrapolation furnishes us with the following approximate annual sales figures: \$48,000 to Tarter, Webster and Johnson and \$180,000 to Pacific Forest Products, Inc. Upon these facts, including the evidence as to the Employer's purchases during the fiscal year ending March 31, 1951, we find that the operations of the Employer affect commerce within the meaning of the Act.

The Board has determined that it will effectuate the policies of the Act to assert jurisdiction over those enterprises which affect commerce by virtue of the fact that they furnish goods or services necessary to

⁴ The only lumber not shipped directly to California customers of the wholesalers during the past fiscal year appears to be part of sales to Pacific Forest Products, Inc. About 8 percent of the sales to Pacific is delivered to Western Dry Kiln Company, Oakland, California, which dries lumber for Pacific, and the eventual destination of this percentage is unknown; and 17 percent is delivered to the distributing yards of Pacific at Fresno, California, for distribution to retail lumberyard customers in the Fresno area.

⁵ We consider figures for the first 3 months of the fiscal year beginning March 31, 1951, to be more representative and indicative of the Employer's business capacity than the figures submitted for the first full fiscal year, since the greater portion of that year was devoted to organization. Full production was not begun until the early part of 1951.

⁶ Sales to the other wholesalers during the period from March 31, 1951, to June 31, 1951, consisted of: \$82,000 to Gosslin-Harding Lumber Company of Oakland, California, which annually ships outside the State of California, lumber valued at \$21,000; and \$18,000 to Hill and Morton, Inc., of Oakland, California, which annually ships outside the State of California, lumber valued at \$20,000. No sales were made since March 31, to California Lumber Sales of Oakland, California.

⁷ The record reveals that at the time of the hearing the Employer contemplated the hiring of from 10 to 15 additional employees, including a logging engineer, within 60 to 90 days.

the operations of other employers engaged in commerce, without regard to other factors, where such goods or services are valued at \$50,000 per annum or more, and are sold to enterprises engaged in producing or handling goods destined for out-of-State shipment, or performing services outside the State, in the value of \$25,000 per annum, or more.⁸ The Employer in this proceeding sells, annually, necessary goods valued in excess of \$50,000 to a company engaged in interstate commerce, which annually ships outside the State, goods valued in excess of \$25,000.⁹ Pursuant to our previously announced policy, therefore, we will exercise jurisdiction herein.

2. The labor organization involved claims to represent employees of the Employer.

3. A question affecting commerce exists concerning the representation of employees of the Employer within the meaning of Section 9 (c) (1) and Section 2 (6) and (7) of the Act.

4. The appropriate unit:

The parties stipulated that the appropriate unit consists of all production and maintenance employees at the Employer's Briceland, California, logging and sawmill operations, excluding office and clerical employees, professional employees, guards, and supervisors as defined in the Act.¹⁰

It was further stipulated at the hearing that there are 92 employees, including 2 cleanup men who watch for fire,¹¹ and a scaler. There are occasional interchanges and transfers between the employees in the logging and mill operations, and the mechanics work on equipment in both operations. All employees are paid an hourly rate and work 8 hours per day, 5 days per week. They have the same insurance benefits and the same vacation privileges.

We find a unit composed of all production and maintenance employees employed at the Employer's Briceland, California, logging and sawmill operations including the cleanup men and the scaler, but excluding office and clerical employees, professional employees, guards, and supervisors as defined in the Act,¹² to be the appropriate unit for

⁸ See *Hollow Tree Lumber Company*, 91 NLRB 635.

⁹ We find not controlling the fact that the company which is furnished goods by the Employer sells all those goods within the State of California. The Board makes no attempt to follow the goods sold in accordance with the minimum requirements established by the *Hollow Tree*, *supra*, doctrine.

¹⁰ The Petitioner's motion to amend the description of the unit was granted at the hearing.

¹¹ The record reveals that these employees devote their full time to cleanup work and only incidentally watch for fire hazards. They wear no uniforms and carry no arms.

¹² The Employer urges that the Board spell out the supervisory exclusions by job classifications. Both parties stipulated at the hearing that the following parties are supervisors within the meaning of the Act: President and general manager, assistant manager, sawmill superintendent, logging superintendent, day shift foreman, nightshift foreman, planing foreman, yard foreman, foreman of fallers and buckers (bull buckler), truck foreman, and yard and loading foreman.

the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

[Text of Direction of Election omitted from publication in this volume.]

WESTINGHOUSE ELECTRIC CORPORATION (SUNNYVALE PLANT) and
CLYDE W. SCHEUERMANN

INTERNATIONAL ASSOCIATION OF MACHINISTS, LOCAL No. 504 and CLYDE
W. SCHEUERMANN. *Cases Nos. 20-CA-328 and 20-CB-102. Sep-*
tember 28, 1951

Decision and Order

On March 15, 1951, Trial Examiner Frederic B. Parkes 2nd issued his Intermediate Report in the above-entitled proceeding, finding that the Respondents had not engaged in the unfair labor practices alleged in the complaint and recommending that the complaint be dismissed in its entirety, as set forth in the copy of the Intermediate Report attached hereto. Thereafter, the General Counsel filed exceptions to the Intermediate Report and a supporting brief. The Respondent Company also filed exceptions and a supporting brief.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions, briefs, and the entire record in the case and hereby adopts the findings, conclusions, and recommendations of the Trial Examiner, but only to the extent that they are consistent with the Decision and Order herein.

1. The Trial Examiner dismissed the complaint insofar as it alleges that the Respondent Union violated Section 8 (b) (2) and 8 (b) (1) (A) and the Respondent Company violated Section 8 (a) (3) and 8 (a) (1) of the Act by the discharge of employee Marovich on September 20, 1949, and the alleged attempt to discharge employees King, Pachorik, and Scheuermann on or about September 9, 1949.¹ Contrary to the General Counsel's contentions, the Board is not convinced by the clear preponderance of all the relevant evidence that the Trial

¹ These allegations were added to the complaint on motion of the General Counsel made at the hearing 1 year after the alleged occurrence of the unfair labor practices in question. Contrary to the Respondent Company's exceptions, as the alleged unfair labor practices occurred within 6 months of the filing and service of the original charge, these allegations were properly and timely added in the amended complaint. *Cuthey Lumber Company*, 86 NLRB 157, enforced, 185 F. 2d 1021 (C. A. 5); *Ferro Stamping & Manufacturing Co.*, 93 NLRB 1459.