

In the Matter of COBBS AND MITCHELL COMPANY¹ and INTERNATIONAL
WOODWORKERS OF AMERICA, LOCAL 5-92, CIO

Case No. 19-R-1545.—Decided January 15, 1946

Mr. C. L. Starr, of Portland, Oreg., for the Company.

Mr. Harvey R. Nelson, of Portland, Oreg., and *Mr. Earle C. Harper*, of Willamina, Oreg., for the CIO.

Messrs. Doyle Pearson and *Harold McKenzie*, both of Portland, Oreg., and *Mr. W. O. Kelsay*, of Eugene, Oreg., for the AFL.

Mr. Glenn L. Moller, 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 5-92, CIO, herein called the CIO, alleging that a question affecting commerce had arisen concerning the representation of employees of Cobbs and Mitchell Company, Valsetz, Oregon, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Erwin A. Peterson, Trial Examiner. The hearing was held at Dallas, Oregon, on July 5, 1945. The Company, the CIO, and Lumber & Sawmill Workers Local Union 2692, A. F. L., herein called the AFL, 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 an 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

Cobbs and Mitchell Company, an Oregon corporation, has its principal office and place of business at Valsetz, Oregon. The Company

¹ The pleadings were amended at the hearing to correctly name the employer as shown above

is engaged in the manufacture and sale of lumber and lumber products. During the year 1944 the Company processed approximately 40 million board feet of lumber, of which more than 90 percent was shipped from the Company's Valsetz plant to points outside the State of Oregon.

We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

International Woodworkers of America, Local 5-92, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Company.

Lumber and Sawmill Workers Local Union 2692, chartered by the United Brotherhood of Carpenters and Joiners of America, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the CIO as the exclusive bargaining representative of the employees at the Company's logging operations until the CIO has been certified by the Board in an appropriate unit.

Subsequent to the request of the CIO, the Company and the AFL had agreed upon a renewal contract covering the employees sought to be represented by the CIO, but the parties understood that such contract was subject to termination in the event of certification of another labor organization. At the time of the hearing the AFL had not yet signed the contract. Neither the Company nor the AFL urges the contract as a bar to this proceeding.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the CIO represents a substantial number of employees in the unit hereinafter found appropriate.²

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 CIO contends that the appropriate unit should consist of all production, maintenance, construction and transportation employees

² The Field Examiner reported that the CIO submitted petitions designating the CIO as bargaining agent, bearing apparently genuine signatures of 56 persons listed on the Company's pay roll. The AFL relies upon its contract as evidence of its interest. There are approximately 64 employees in the appropriate unit.

at the Company's logging operations, excluding clerical and supervisory employees. The Company agrees with the CIO except that it would exclude the transportation employees at the Company's logging operations, who, it asserts, are employees of an independent contractor. The AFL seeks to include in the appropriate unit the employees at the Company's sawmill.

In 1943, upon petitions filed by the CIO, the Board found appropriate separate units of sawmill and logging operations employees.³ The AFL participated in that proceeding and subsequently won the elections in both units. As pointed out in our Decision in the previous case, collective bargaining had been conducted by the AFL and its sister local No. 2636 on behalf of the woods and mill employees, respectively, in separate units, and the parties had all stipulated at the hearing in that proceeding that such separate units were appropriate. The only contention which the AFL now advances in support of its altered position is that for the past 2 years the two locals have attempted to keep the contracts covering the two units as uniform as possible and that some of the contract negotiations have been conducted simultaneously. There has been no attempt, however, to write one contract covering both operations. The locals each draft their own proposals for changes in their contracts, negotiate them separately and approve or disapprove them separately. We find that the separate units established by the history of collective bargaining and already approved by this Board are appropriate for the purposes of collective bargaining.⁴

The CIO seeks to include in the unit several truck drivers who are admittedly in the employ of an independent contractor. The Company does not hire or discharge them and exercises no control over them. We shall exclude them from the unit.

The CIO seeks to include in the unit the bull buck and hook tenders even though they may be supervisory employees within the Board's customary definition. The Company takes no position and the AFL, although stating that it has not represented the bull buck in the past, has no objection to the inclusion of these classifications. For the reasons set forth in the majority decision in *Matter of Coos Bay Lumber Company*,⁵ we shall include the bull buck and hook tenders in the appropriate unit.

We find that all production, construction, and maintenance employees of the Company's logging operations at Valsetz, Oregon, including the bull buck and hook tenders, but excluding all clerical employees, all employees of the trucking contractor, the camp foreman

³ 51 N L R B 320

⁴ *Matter of Weyerhaeuser Timber Company*, 62 N L R B 1166.

⁵ 62 N L R B 93.

and all or any other supervisory employees above the rank of camp foreman, 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 the 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 Cobbs and Mitchell Company, Valsetz, 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 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 they desire to be represented by International Woodworkers of America, affiliated with the Congress of Industrial Organizations, or by Lumber & Sawmill Workers Local Union 2692, affiliated with the American Federation of Labor, for the purposes of collective bargaining, or by neither.

MR. GERARD D. REILLY, dissenting:

For the reasons stated in my dissenting opinion in *Matter of Coos Bay Lumber Company*,⁶ I disagree with the inclusion of supervisory employees within the unit of rank and file maintenance and production employees.

⁶ 62 N. L. R. B. 93.