

In the Matter of **Klickitat Pine Box Co. and T. V. Wilkins Co. and  
Lumber & Sawmill Workers Union, U. B. of C. & J. A., A. F. L.**

*Case No. 19-R-1541.—Decided February 19, 1946*

*Messrs. H. L. Lewis and Z. O. Brooks, of Goldendale, Wash., for the Companies.*

*Mr. Clarence E. Briggs, of Pineville, Oreg., and Messrs. Don Gillman and William A. Wedel, of Klamath Falls, Oreg., for the AFL.*

*Messrs. S. J. Severson and Virgil Burtz, of Portland, Oreg., Mr. W. J. Baker, of Vancouver, Wash., and Mr. Raymond Gueber, of Goldendale, Wash., for the CIO.*

*Mr. Herbert C. Kane, of counsel to the Board.*

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a second amended petition duly filed by Lumber & Sawmill Workers Union, U. B. of C. & J. A., A. F. L., herein called the AFL, alleging that a question affecting commerce had arisen concerning the representation of employees of Klickitat Pine Box Co., herein called Klickitat,<sup>1</sup> and T. V. Wilkins Co., herein called Wilkins, both of Goldendale, Washington, and herein collectively called the Companies, the National Labor Relations Board provided for an appropriate hearing upon due notice before John E. Hedrick, Trial Examiner. Said hearing was held at Goldendale, Washington, on June 26, 1945. On August 24, 1945, pursuant to an order of the Board, a further hearing, upon due notice was held at Goldendale, Washington, before Erwin A. Peterson, Trial Examiner. The Companies, the AFL, and the International Woodworkers of America, Local 9-58, herein called the CIO,<sup>2</sup> appeared and participated in both hearings. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the original hearing, the CIO moved to dismiss the petition. The Trial

<sup>1</sup> The name appears as amended at the hearing.

<sup>2</sup> At the original hearing, the Trial Examiner granted the motion of the CIO to intervene.

Examiner reserved ruling on the motion for the Board. For the reasons hereinafter stated, we deny the motion. The Trial Examiners' rulings made at both hearings 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 COMPANIES

Klickitat Pine Box Co., a partnership, is engaged in the manufacture of box shook. We are here concerned only with its sawmill operations at Goldendale, Washington. During 1944, Klickitat produced approximately \$1,000,000 worth of box shook, over 50 percent of which was shipped outside the State of Washington.

T. V. Wilkins Co., a partnership, is engaged in the logging and trucking of lumber in the State of Washington. All its products are sold to Klickitat Pine Box Co. for use in the manufacture of box shook.

Each of the Companies admits and we find that each is engaged in commerce within the meaning of the National Labor Relations Act.

### II. THE ORGANIZATIONS INVOLVED

Lumber & Sawmill Workers Union, U. B. of C. & J. A., affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Companies.

International Woodworkers of America, Local 9-58, affiliated with the Congress of Industrial Organizations, is a labor organization admitting to membership employees of the Companies.

### III. THE QUESTION CONCERNING REPRESENTATION

On April 2, 1945, the AFL, without prior demand for recognition by the Companies, filed its petition herein. Thereafter, it filed an amended and a second amended petition. At the hearing the CIO moved to dismiss the petition because of the pendency before the War Labor Board of a wage issue involving it and the Companies.

The CIO has been in contractual relationship concerning wages, hours, and conditions of employment with both Companies and their predecessors since June 21, 1940. The original contract between the parties, as supplemented, was terminated by the CIO as of April 1, 1945, by timely notice, and was succeeded by a contract dated May 18, 1945, between the CIO, Klickitat, and Wilkins. Late in 1944 or early in January 1945, the first contract was reopened in accordance with

its terms on the question of wages. In January 1945, the wage issue became the subject matter of a proceeding before the War Labor Board. The latter proceeding was still pending at the time of the hearing.

Inasmuch as the May 18, 1945, contract was executed after the filing of the AFL's petition herein, it cannot bar a present determination of representatives. Similarly, the contract of June 21, 1940, with the various supplements thereto, was terminated as of April 1, 1945, and cannot, therefore, standing by itself, operate as a bar to this proceeding. The CIO, however, contends, in effect, that the proceeding before the War Labor Board bars an election at this time under the *Allis-Chalmers* doctrine.<sup>3</sup> We do not agree.

At the time of the commencement of the proceedings before the War Labor Board, the CIO had already been the recognized bargaining representative for over 4 years and had had ample opportunity to obtain, and had obtained, substantial benefits for the employees whom it had been representing. Accordingly, under well-established principles, the pendency of the War Labor Board proceeding cannot operate to bar this proceeding.<sup>4</sup>

A statement of a Board agent, introduced into evidence at the hearing, indicates that the AFL represents a substantial number of employees in the unit hereinafter found appropriate.<sup>5</sup>

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 parties agree that a unit of all production and maintenance employees in the sawmill and box factory operations at Goldendale, Washington, of Klickitat, and of all logging and trucking employees of Wilkins, except for supervisory and clerical employees, would be appropriate. They are, however, in dispute with respect to the in-

<sup>3</sup> 50 N. L. R. B. 306

<sup>4</sup> *Matter of Jackson Box Company*, 59 N. L. R. B. 808; *Matter of American Chain & Cable Company, Inc.*, 59 N. L. R. B. 644; *Matter of Lancaster Iron Works*, 65 N. L. R. B. 105.

<sup>5</sup> The Field Examiner reported that the AFL submitted 52 designation cards; that the names of 41 persons appearing on the cards were listed on the Companies' pay roll, which contained the names of 102 employees in the appropriate unit.

The CIO submitted 89 dues and pay-roll deduction records as proof of its interest.

The CIO requested that the cards submitted by the AFL as proof of its interest be disregarded on the ground that they were ambiguous in that they contained an application for membership on one side and a designation of the AFL on the other. At the same time the AFL objected "to entering into evidence any reference to the AFL designation card." The purpose of the preliminary showing of cards and of the Field Examiner's statement has frequently been set forth in our decisions. Accordingly, we shall deny the CIO's request and overrule the AFL's objection. *Matter of H. G. Hill Stores, Inc.*, 39 N. L. R. B. 874; *Matter of Lalance & Grosjean Manufacturing Co.*, 63 N. L. R. B. 130.

clusion of the salaried millwright, the floor foremen, one clerical employee, the bull buck, hook tenders, and master mechanics.<sup>6</sup> All these categories are hereinafter discussed.

*Millwright:* Klickitat employs two individuals in this capacity; one of them is hourly rated, the other salaried. The parties agree to include the hourly rated employee. However, Klickitat and the AFL would exclude, and the CIO would include, the salaried millwright. The salaried employee takes the place of the superintendent of the sawmill in the latter's absence, which appears to be infrequent. When a night shift is operating at Klickitat this employee is night superintendent of the sawmill. At the time of the hearing there was no night shift in operation and this employee was performing the duties of a millwright. The record does not disclose any plans of Klickitat to resume night operations. On the basis of the record, we are persuaded that the occasional substitution of this employee for the superintendent does not place him in the category of a supervisory employee. Accordingly, we shall include him in the unit.<sup>7</sup>

*Floor foremen:* Klickitat and the AFL would exclude, and the CIO include, the two employees in this category. Each of these employees is located at one of Klickitat's two box factories and is under the supervision of the superintendent of the box factories. Each directs the work of the employees under him and works along with these employees. While floor foremen may make recommendations concerning the status of their subordinates, such recommendations are always followed by an independent investigation on the part of the superintendent. It is thus clear that these floormen do not have the authority effectively to recommend changes in the status of their subordinates. Accordingly, we are of the opinion that the floor foremen are not supervisors under our usual definition of that term, and we shall include them in the unit.

*Clerical employees:* The parties agree generally to exclude clerical employees. They are in disagreement, however, with respect to one clerical employee<sup>8</sup> working for Klickitat. The CIO would include, and the AFL and Klickitat would exclude, this employee. He does clerical work for approximately one-third of his time and spends the remainder of his time doing odd maintenance jobs, consisting chiefly of electrical work. Because the duties and interests of this employee are more akin to those of the production and maintenance employees than to those of the other clerical employees, we shall include him in the unit as a maintenance employee.

<sup>6</sup> Neither Klickitat nor Wilkins took a position concerning those categories not in their respective employ.

<sup>7</sup> Should this employee resume his former duties as night superintendent, it is clear that he would then, as a supervisory employee, fall outside the unit.

<sup>8</sup> Earl Walton.

*The bull buck, hook tenders, and master mechanics:* The AFL and the CIO would include the bull buck; Wilkins would exclude the bull buck as a supervisory employee. The CIO would also include the hook tenders and master mechanics, while the AFL and Wilkins took no position with respect to these employees.<sup>9</sup> For the reasons set forth in the majority decision in *Matter of Coos Bay Lumber Company*,<sup>10</sup> emphasizing custom in the industry, we shall include the bull buck, hook tenders, and master mechanics in the unit.

We find that all production and maintenance employees<sup>11</sup> in the sawmill and box factory operations at Goldendale, Washington, of Klickitat, including millwrights and floor foremen, and the logging and trucking employees of Wilkins, including the bull buck, hook tenders, and master mechanics, but excluding all clerical employees 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 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 Klickitat Pine Box Co. and T. V. Wilkins Co., both of Goldendale, 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 Article III, Sections 10 and 11, of

<sup>9</sup> The record does not disclose the number, if any, of hook tenders and master mechanics employed by Wilkins. In view of the requested inclusion, we shall assume for the purposes of this proceeding, that Wilkins employs persons in this category.

<sup>10</sup> 62 N. L. R. B. 93

<sup>11</sup> Including Earl Walton.

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 the 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 Lumber & Sawmill Workers Union, U. B. of C. & J. A., A. F. L., or by International Woodworkers of America, Local 9-58, C. I. O., 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*,<sup>12</sup> I disagree with the inclusion of supervisory employees within the unit of rank and file maintenance and production employees.

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<sup>12</sup> 62 N. L. R. B. 93.