

In the Matter of WILLIAMS BROWNELL PLANING MILL COMPANY, INCORPORATED and UPHOLSTERERS INTERNATIONAL UNION OF N. A., A. F. OF L., LOCAL 336

Case No. 5-R-2096.—Decided February 27, 1946

Mr. Kester Walton, of Asheville, N. C., for the Company.

Messrs. Carl H. Bradley and *A. H. Hanson*, of Asheville, N. C., for the Union.

Mr. John A. Nevros, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by Upholsterers International Union of N. A., A. F. of L., Local 336, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Williams Brownell Planing Mill Company, Incorporated, Biltmore, North Carolina, herein called the Company,¹ the National Labor Relations Board provided for an appropriate hearing upon due notice before George H. Weasler, Trial Examiner. The hearing was held at Asheville, North Carolina, on November 1, 1945. The Union appeared, participated, and was afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Company appeared specially at the opening of the hearing and filed a motion for a continuance of the hearing herein until such time as a representative is appointed with legal authority to attend to the affairs of John P. Hansen, president of the Company, who was then confined to an institution, and to exercise official authority for the Company.² It also objected to any further proceedings in this matter. The Trial Examiner denied the motion for continuance and overruled the objection. His rulings are hereby upheld.

It is clear that the Company, a North Carolina corporation, is a legal entity, and that it and not the president is a necessary party to this proceeding. Moreover, the contention of counsel for the Company

¹ The name of the Company appears as corrected at the hearing.

² John P. Hansen owns approximately 95 percent of the stock of the Company. It was the position of the Company that he is the sole and exclusive person having managerial functions

that "there was no one with legal authority or with proper authority to act" is refuted by the record. In this connection it appears that the Company has uninterruptedly continued to function as a going concern since "sometime during the year 1943" when John P. Hansen, the president of the corporation, was committed to a hospital for the mentally incompetent, and that since September 25, 1945, wage increases have been authorized by Chester A. Honeycutt, as assistant to Mr. Hansen, who apparently has been operating the Company's business during the latter's absence, with the advice and assistance of certain other employees of the Company. The Company thereafter participated with the understanding that it would not thereby prejudice its position. It was afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. All other rulings of the Trial Examiner 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

Williams Brownell Planing Mill Company, Incorporated, a North Carolina corporation, having its principal office and only plant at Biltmore, North Carolina, is engaged in the business of buying and selling lumber. During the year 1944 the Company purchased logs and other raw materials valued in excess of \$100,000, all of which was obtained within the State of North Carolina. During the same period the Company sold finished products valued in excess of \$200,000, of which approximately 90 percent represented sales and shipments to points outside the State.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

Upholsterers International Union of N. A., Local 336, 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 Union as the exclusive bargaining representative of its employees until the Union has been certified by the Board in an appropriate unit.³

³The Company gave as additional grounds for refusing to grant recognition to the Union the reasons set forth in its motion for continuance filed at the beginning of the hearing.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union 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 Union seeks a unit of all production and maintenance workers, including watchmen⁵ and firemen, but excluding yard employees, office clericals, and supervisory employees.⁶ The sole dispute between the parties relates to the yard employees, whom the Company would include.

The Company employs approximately 94 workers, excluding supervisors and office personnel. Among these are approximately 20 yard employees who are generally stationed in a yard adjoining the Company's buildings housing the dry kiln, 2 machine rooms, and 1 shipping department and storage shed. In this yard the Company stores lumber until such time as it is used in the various parts of the planing mill. The yard employees stack lumber, remove it from trucks and freight cars, and carry it into the mill as needed. These employees, like all other workers of the Company, except the office personnel, are hourly paid, work the same hours, have the same working conditions, receive the same holidays, use the same toilet facilities and rest rooms, and punch the same time-clocks in the main mill. The yard employees work inside the planing mills when necessary and some of the production employees and haulers in the mill occasionally work in the yard. The parties would include a number of yard truckers who work in close contact with the yard employees, operating trucks which carry lumber in and about the yard, into the planing mills, and to and from the kilns. Under all the circumstances in the case, including the degree of interchange of yard employees with mill personnel and the considerable integration of the Company's corporations, we are of the opinion that the interests of the yard workers are clearly identified with those of the production and maintenance workers, and we shall, therefore, include them in the unit.

We find that all production and maintenance employees, including yard employees, yard truckers, watchmen, and firemen, but excluding bookkeepers, clerical employees, foremen, and all or any other supervisory employees with authority to hire, promote, discharge, disci-

⁴ The Field Examiner reported that the Union submitted 48 authorization cards bearing the names of employees listed on the Company's then current pay roll and that there are approximately 76 employees in the alleged appropriate unit.

⁵ The record shows that the watchmen are neither armed, militarized, nor deputized.

⁶ The unit appears above as amended at the hearing.

pline, 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

At the hearing the Union requested that the pay roll for the period following the hearing be used to determine eligibility to vote in any election that the Board might direct. Inasmuch as no sufficient reason appears for departing from the usual pay-roll date, 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 Williams Brownell Planing Mill Company, Incorporated, Biltmore, North Carolina, 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 Fifth 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 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 Upholsterers International Union of N. A., A. F. of L., Local 336, for the purposes of collective bargaining.

MR. GERARD D. REILLY took no part in the consideration of the above Decision and Direction of Election.