

In the Matter of WILLAMETTE NATIONAL LUMBER COMPANY, EMPLOYER
and INTERNATIONAL WOODWORKERS OF AMERICA, LOCAL 5-265, CIO,
PETITIONER.

Case No. 19-R-1993.—Decided July 21, 1947

Messrs. William A. Babcock, Jr. and *Harvey Nelson*, both of Portland, Oreg., for the Petitioner.

Mr. Doyle Pearson, of Portland, Oreg., and *Mr. L. G. Carroll*, of Eugene, Oreg., for the Intervenor.

Messrs. Robert S. Miller and *W. Swindells*, both of Portland, Oreg., for the Employer.

Mrs. Platonia P. Kaldes, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

Upon a petition duly filed, hearing in this case was held at Portland, Oregon, on February 6, 7, 10, and 11, 1947, before Daniel R. Dimick, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed. During the course of the hearing, the Employer and the Willamette Valley District Council, Lumber and Sawmill Workers Union, Local 2072, AFL, herein referred to as the Intervenor, moved to dismiss the petition. These motions were referred to the Board. For the reasons hereinafter set forth we hereby deny the motions of the Employer and the Intervenor to dismiss the petition.¹ We likewise deny the Employer's request for oral argument, inasmuch as the record and the briefs, in our opinion, adequately present the issues and the contentions of the parties.

After the close of the hearing, the Petitioner filed with the Board a motion to incorporate in the record an affidavit of the Petitioner's business agent purporting to establish certain facts concerning the

¹ In support of their respective motions to dismiss the petition, the Employer and the Intervenor each claimed that their contract dated July 19, 1946, constituted a bar to this proceeding, that the proposed unit was inappropriate for the purposes of collective bargaining, and that because of the imminent expansion of the Employer's operations no election should presently be directed. The Employer further contended that the Board lacked jurisdiction over it.

Employer's operations. The Board thereupon ordered the Employer to show cause as to why the affidavit should not be received in evidence. The Employer, while not denying the materiality of the facts sought to be established by the Petitioner, objected to the admission of the affidavit in evidence on the ground that the statements therein were not accurate. However, in an affidavit filed by the Employer in support of its objections to the Petitioner's motion, a portion of the Petitioner's allegations are admitted to be true. Under these circumstances we shall permit the affidavits of the Petitioner and the Employer to be incorporated as part of the record herein but only to the extent that the matters therein are not in dispute.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE EMPLOYER

Willamette National Lumber Company, an Oregon corporation, is engaged in the lumber business; it presently operates a logging camp near Foster, Oregon, and through a separate division,² a lumber mill and camp at or near Dallas, Oregon. It intends in the near future to operate a sawmill at Foster, Oregon, which was under construction at the hearing date. The employees involved in this proceeding are employed in connection with the Foster operations.

At the Foster operations, the Employer produced approximately 7 million board feet of lumber valued at approximately \$200,000 during the period beginning July 1946, and ending January 30, 1947. The major portion of the lumber so produced has been transported to the Employer's millpond at the site of the new sawmill near or at Foster, Oregon, where it will be milled when the sawmill is completed. The Employer admits that a large proportion of all the lumber so milled will be shipped to out-of-State destinations.³

At the Dallas operations of the Employer, which were acquired in November 1946 by merger of the Employer with the Corvallis Lumber Company, the Employer is presently engaged in shipping substantial amounts of lumber there produced to out-of-State destinations.⁴

² This division is called the "Corvallis Lumber Company."

³ The Employer estimates that almost 80 percent of the lumber to be milled at the sawmill amounting in value to about \$800,000 per year will be sold and transported to States other than the State of Oregon.

⁴ During the year 1946, the Corvallis Lumber Company sold lumber valued at \$900,000, of which 75 or 80 percent was shipped outside the State of Oregon.

We find, contrary to its contention, that the Employer is engaged in commerce within the meaning of the National Labor Relations Act.⁵

II. THE ORGANIZATIONS INVOLVED

The Petitioner is a labor organization affiliated with the Congress of Industrial Organizations, claiming to represent employees of the Employer.

Willamette Valley District Council, Lumber and Sawmill Workers Union, Local 2702, Intervenor herein, is a labor organization affiliated with the American Federation of Labor, claiming to represent employees of the Employer.

III. THE QUESTION CONCERNING REPRESENTATION

On July 19, 1946, shortly after the Employer commenced the operations herein involved, the Employer and the Intervenor entered into a contract covering all employees of these operations, which contract was effective initially until July 1, 1947, and thereafter from year to year unless 30 days prior to any July 1 date either party gives notice of a desire to alter, modify, or terminate the agreement. This agreement was supplemented by the parties on August 20, 1946.

On August 26, 1946, the Petitioner requested the Employer to recognize it as the representative of certain of its employees, and on August 30, 1946, the Employer replied that it had executed an agreement with the Intervenor on July 19, 1946, covering the employees in question.

At the hearing, the Employer and the Intervenor contended that their July 19, 1946, agreement constituted a bar to a determination of representatives for its initial term. However, the petition was filed before the operative date of the automatic renewal provision of the July 19, 1946, contract and the initial term of the agreement is about to expire. Accordingly, we find that the July 19, 1946, contract is no bar to a present determination of representatives.

We find further 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

Full scale operation of the Employer's lumber business at Foster, Oregon, is awaiting the completion of sawmill construction there. In preparation for its sawmill operations the Employer, at various times

⁵ See *N. L. R. B. v. Virginia Electric & Power Company*, 115 F. (2d) 414, 415-416 (C. C. A. 4), affirmed on this point, 314 U. S. 469, 476; *N. L. R. B. v. Cleveland Cliffs Iron Co.*, 133 F. (2d) 295, 297-300 (C. C. A. 6).

during the past year, has been engaged in cutting and falling logs at its logging or woods operations which are located 25 miles from Foster, Oregon, and in storing these logs at a pond adjacent to the sawmill site. At the hearing date the personnel engaged in the Employer's operations consisted of woods employees, log truck drivers, pondmen, machine shop employees, office clerical employees, and a group of workers having duties relating to the operation of a cook house located at the sawmill site. At the time of the hearing no employees were yet engaged to work in the sawmill as such.

The Petitioner seeks a unit confined to the employees engaged in connection with the logging or woods operations of the Employer, as distinguished from the sawmill operations, and would include in such a unit all production, maintenance, and transportation employees, all bull bucks and hook tenders, pondmen, cook house workers, and log truck drivers, but would exclude office clerical and machine shop employees and all supervisory employees above the rank of foremen other than bull bucks and hook tenders. The Employer agrees that the unit should be confined to its woods operations, while the Intervenor claims that woods operations employees may not properly be separated for bargaining purposes from sawmill employees. Both the Intervenor and the Employer agree to the specific exclusions proposed by the Petitioner except that both would also exclude bull bucks and hook tenders, pondmen, log truck drivers, and cook house workers.

The record discloses that the sawmill employees will be carried on a separate pay roll, will be under separate supervision,⁶ and will perform functions which are different from those performed by logging employees. Under these circumstances, including the geographical separation of the logging and sawmill operations, we are of the opinion that the appropriate unit may properly be confined to the woods operations employees.⁷

We consider next the contentions of the parties as to the specific composition of the unit.

1. *Pondmen and cook house workers*

The Intervenor and the Employer contend that pondmen and cook house workers have functions relating to the sawmill operations and

⁶ The sawmill employees will be under the direction of the mill superintendent while the logging operations employees will remain under the supervision of the logging superintendent.

⁷ Cf. *Matter of Weyerhaeuser Timber Company*, 62 N. L. R. B. 1166, 1169. Although the Intervenor contends that its contract with the Employer covered both sawmill and logging employees and that a narrower unit would contravene collective bargaining history, we find no record support for this contention. We note in this connection that the Employer testified that the contract with the Intervenor covered only the logging operations employees and that the Employer had no sawmill employees when the contract was written.

should not, therefore, be grouped together with the woods employees. The Employer further asserts as to the cook house employees that they are not its employees but the employees of an independent contractor. The Petitioner concedes that the pondmen and cook house workers might well be included in a unit of sawmill workers if such a unit is established.⁸ It contends, however, that these categories of workers should be grouped together with woods employees in the absence of an established unit of sawmill employees.

The pond is adjacent to the sawmill and the cook house is part of the sawmill properties, approximately 25 miles from the logging operations. The cook house employees are not under the same supervision as the logging employees; the pondmen, while temporarily under the same supervision as the logging employees, will ultimately be under the mill superintendent's supervision. Under all the circumstances, including the geographic separation of the pond and cook house operations from the logging operations, we shall exclude the pondmen and cook house employees from the unit.⁹

2. *Log truck drivers*

The Employer and the Intervenor both seek the exclusion of log truck drivers who are engaged in transporting the Employer's logs from the woods to the mill pond, on the ground that they are not employees of the Employer but of an independent contractor.

The record discloses that on or about August 1, 1946, the Employer entered into a written contract with a partnership doing business as the Updegrave Trucking Company¹⁰ for the transportation of the logs by the latter between the woods and the mill pond, payment for the service to be made by the Employer at a given rate per thousand board feet.¹¹ The trucking company, a concern which has been engaged in the transportation business for many years and which provides transportation service for several other logging companies, agreed to provide all the trucks, equipment, and labor necessary to transport the Employer's logs between the points above stated. It hires the log truck drivers and assigns them their duties; it compensates them for their work at the rates it has established, pays the necessary pay-roll taxes and workmen's compensation insurance premiums, and makes deductions from their salaries for employee taxes and for the group hospitalization premiums which are due under a

⁸ The Employer testified that the sawmill operations would commence about June 1, 1947

⁹ We find it unnecessary to pass upon the Employer's claim that cook house workers are not the Employer's employees

¹⁰ Hereinafter referred to as "the trucking company"

¹¹ The contract was to have expired pursuant to its terms on December 31, 1946, but has apparently been extended

plan available to all the trucking company employees. The trucking company further pays all expenses for the trips made by the trucks, such as gas, oil, and repairs, pays all fines levied against the truck drivers for traffic violations, and the premiums for public liability insurance. The Employer has no control over the hiring or discharging of log truck drivers, the wages to be paid to them, or the manner in which they perform their work, except that pursuant to the contract, it may request the trucking company to remove from its operations any driver it finds objectionable to it. While the Employer's supervisory agents have occasionally directed log truck drivers to report at a certain time in order to pick up logs, this circumstance is not of itself determinative of the employer-employee relationship. Upon all the facts we are not persuaded that log truck drivers are the employees of the Employer within the meaning of the Act.¹² Accordingly, we shall exclude them from the unit.

3. *Bull bucks and hook tenders*

These two classifications of employees possess clear supervisory authority.¹³ The Petitioner seeks their inclusion in the unit on the ground that they are of the class of supervisory employees who may properly be represented in the same unit with rank and file employees because of the industrial custom prevailing in small logging operations in the Pacific Northwest. The record discloses that neither of these classifications of employees was covered by the July 19, 1946, contract between the Employer and the Intervenor. Under these circumstances, we shall exclude bull bucks and hook tenders from the unit.¹⁴

We find that all employees of the Employer' engaged in the woods operations at or near Foster, Oregon, including all production, maintenance, and transportation employees, but excluding office clerical employees, pondmen, cook house workers, machine shop employees, log truck drivers, bull bucks, hook tenders, and all other supervisory employees, 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

The Employer asserted that an election would be inappropriate because as of the hearing date the woods operations were closed down

¹² Cf. *Matter of Canyon Lumber Co.*, 59 N. L. R. B. 1512, 1513.

¹³ Bull bucks have authority to recommend the hiring or discharging of crews engaged in falling and bucking timber. Hook tenders have full authority to hire or discharge employees engaged in yarding or loading operations.

¹⁴ Cf. *Matter of Canyon Lumber Co.*, 59 N. L. R. B. 1512, 1513.

and because the Employer expected to employ more than 100 workmen within 60 days of resumption of such operations. On the basis of the Employer's post-hearing affidavit it appears that the logging operations have already commenced and that on April 7, 1947, there were 55 employees engaged there. The Employer further stated that it anticipated a full crew on or before July 15, 1947. Under these circumstances, we find that the present group of employees in question is substantial and representative of the total working force which may ultimately be employed and that they are presently engaged in production. We shall, therefore, direct immediate elections.¹⁵ However, the record raises some question as to whether the number presently employed actually constitutes an exact 50 percent or more of the total complement which will eventually be employed and as to when the full complement will be engaged.¹⁶ Accordingly, pursuant to our established policy under such circumstances,¹⁷ we shall entertain a new representation petition affecting the employees involved after 6 months from the date of any certification that may issue in the instant proceedings, upon proof (1) that the number of employees in the appropriate unit is more than double the number of employees eligible to vote in the election hereinafter directed; and (2) that the petitioning labor organization represents a substantial number of employees in the expanded unit.

DIRECTION OF ELECTION

As part of the investigation to ascertain representatives for the purposes of collective bargaining with Willamette National Lumber Company, Foster, 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 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

¹⁵ *Matter of Aluminum Company of America*, 52 N L R B 1040, 1047

¹⁶ Thus, at the time of the hearing, the Employer estimated that the woods operations, which was then shut down because of weather conditions, would be resumed about April 1, with a crew of about 30 to 50 men, and would be progressively increased to about 100 within 2 or 3 months after the sawmill began operating. In the affidavit submitted by the Employer's vice-president after the hearing it was stated that the 55 employees engaged as of April 7, 1947, in the woods operations represented about $\frac{1}{2}$ of the full complement to be engaged and that it was estimated that the full complement would be engaged on July 15, 1947.

¹⁷ See *Matter of Aluminum Company of America*, 52 N L R B 1040, 1046, 1047 *Matter of General Motors Corporation, Fisher Body-Teunstedt Division*, 74 N L R B 18

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, Local 5-265, CIO, or by Willamette Valley District Council, Lumber and Sawmill Workers Union, Local 2702, AFL, for the purposes of collective bargaining, or by neither.¹⁸

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

¹⁸ Any participant in the election herein may, upon its prompt request to and approval thereof by the Regional Director, have its name withdrawn from the ballot.