

make a unit restricted to employees at the Employer's Newark, Ohio, plant inappropriate.²² Accordingly, we shall dismiss the petition filed herein.

Order

IT IS HEREBY ORDERED that the petition in this case be, and it hereby is, dismissed.

²² See *Lever Brothers Company*, 97 NLRB 1240, *International Paper Company, Tona-wanda Mill*, 97 NLRB 764, and cases cited therein. See also *Kaiser Aluminum & Chemical Corporation*, 100 NLRB 107.

H. S. SACKETT, J. B. KNAPP, AND J. D. ROBERTS, A COPARTNERSHIP D/B/A WOOD PRODUCTS COMPANY¹ and INTERNATIONAL WOODWORKERS OF AMERICA, LOCAL 2-21, CIO, PETITIONER. *Case No. 19-RC-994. July 11, 1952*

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 Paul E. Weil, hearing officer. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.²

Pursuant to the provisions of Section 3 (b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel [Chairman Herzog and Members Styles and Peterson].

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

1. The Employer is engaged in commerce within the meaning of the Act.
2. The labor organizations involved claim to represent certain employees of the Employer.³
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
4. The Petitioner seeks, and the Employer does not oppose, a production and maintenance unit at the Employer's sawmill. The Inter-

¹ The caption is amended to reflect the correct name of the Employer.

² The hearing officer referred to the Board the Intervenor's and Corporation's motions to dismiss the petition. For the reasons set forth hereinafter, the motions are hereby denied.

³ Wood Preservers Union Local No. 3078, AFL, herein called the Intervenor, was permitted to intervene on the basis of a claimed contractual interest.

⁴ The Intervenor and Olympia Wood Preserving Co. Inc., contend that their current contract is a bar to this proceeding. The petition herein was filed about 1 month before the "Mill B" date of that contract, and the contract's anniversary date was reached during the pendency of this proceeding. Accordingly, we find, apart from any other considerations, that this contention is without merit. *Micamold Radio Corp.*, 94 NLRB 1193.

venor and Olympia Wood Preserving Co. Inc., herein called the Corporation, contend however that the only appropriate unit is one which embraces not only employees at the sawmill but also employees at the Corporation's creosote plant, which is located adjacent to the sawmill.

In 1946 the Corporation, which had previously operated the creosote plant, built the sawmill to provide scrap lumber for use as fuel for the creosote plant. At sometime prior to January 1952, the Employer acquired possession of the sawmill and has operated it up to the present time. Title to the sawmill and creosote plant is presently being litigated between the Employer and the Corporation.

During the period when the Corporation operated both the sawmill and the creosote plant, the operations of both were completely integrated, the employees of both were carried on a single payroll, labor relations policies for both were established by the Corporation's management, and the employees of both were represented by the Intervenor in a single unit; there was, however, little interchange between the two groups of employees. For some time after the Employer acquired possession of the sawmill, this arrangement, including the common establishment and application of labor relations policies, continued in effect. During this period the partners who constitute the Employer were also directors of the Corporation. Subsequently, however, the partners were replaced as directors of the Corporation and, about or shortly before January 1952, a further split occurred in the relationships between the Employer and the Corporation; among other things, the Employer's labor relations policies are now being established and applied independently of the Corporation's, the sawmill and creosote plant employees are carried on separate payrolls, and the sawmill employees are paid by the Employer's checks, rather than the Corporation's. Although the sawmill and creosote plant, as well as the employees, continue to use certain facilities in common, and scrap lumber from the sawmill is still used by the creosote plant, they are now under separate management, and the Employer has recently installed certain additional facilities which make the sawmill less dependent than formerly for its continued operation upon the operation of the creosote plant. In addition, although the Intervenor has continued to bargain for the sawmill employees and has secured a wage increase for them, the sawmill employees were not expressly included in the most recent contract between the Corporation and the Intervenor, executed in November 1951, and such recent bargaining for the sawmill employees had been with the Employer and not the Corporation.

On the basis of these facts, and particularly the present separate operational control of the sawmill and creosote plant and the present lack of common control over labor relations policies, we find, contra-

to the contention of the Intervenor and the Corporation, that for the purposes of this proceeding the Employer and the Corporation are separate employers within the meaning of the Act.⁵

Moreover, although the sawmill and creosote plant employees were formerly included in a single unit, it is clear from the record, including the Employer's tacit agreement with the Petitioner's unit contention and its separate bargaining with the Intervenor, that the Employer has now determined to pursue an independent course of action in labor relations matters. As the Employer has evidenced such intention at a time when it was not bound to group action by any agreement,⁶ we find that a unit limited to employees of the Employer is appropriate.⁷

We find, accordingly, that all production and maintenance employees at the Employer's Olympia, Washington, sawmill, excluding office and clerical employees, professional employees, guards, 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.⁸

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

⁵ *Ozark Central Telephone Company*, 83 NLRB 258; *The Clark Thread Company*, 79 NLRB 542. The alleged possibility that the outcome of the present litigation between the Employer and the Corporation may reestablish the identity of the two operations as a single employer does not, in our opinion, constitute a valid basis for disregarding the facts as they presently appear. Nor, contrary to the contention of the Corporation and the Intervenor, does it constitute a valid basis for denying to the sawmill employees the right presently to select a bargaining representative of their choice.

⁶ See *Economy Shade Company*, 91 NLRB 1552; cf. *Purity Stores, Ltd.*, 93 NLRB 199; *Engineering Metal Products Corporation*, 92 NLRB 823.

⁷ *Pacific Metals Company, Ltd.*, 91 NLRB 696.

⁸ The parties agree as to the composition of the appropriate unit.

ROZELLE SHOE CORPORATION and UNITED SHOE WORKERS OF AMERICA,
CIO. *Case No. I-CA-886. July 14, 1952*

Decision and Order

On March 14, 1952, Trial Examiner Sidney Lindner issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the copy of the Intermediate Report attached hereto. The Trial Examiner also found that the Respondent had not engaged in certain other alleged unfair labor practices and recommended dismissal of these allegations of the