

**Warm Springs Lumber Co., Inc.,
Employer-Petitioner and Clerks and Lumber
Handlers Union, Local 939, International Union of
Labor and Hod Carriers, AFL-CIO and Millmen's
Union No. 550, United Brotherhood of Carpenters
and Joiners, AFL-CIO. Case 20-UC-19**

March 9, 1970

**DECISION AND ORDER CLARIFYING
CERTIFICATION**

**BY CHAIRMAN McCULLOCH AND MEMBERS
BROWN AND JENKINS**

Upon a petition duly filed under Section 9(b) of the National Labor Relations Act, as amended, a hearing was held before Hearing Officer David J. Salniker. Following the hearing and pursuant to Section 102.67 of the National Labor Relations Board Rules and Regulations and Statements of Procedure, Series 8, as amended, and by direction of the Regional Director for Region 20, this case was transferred to the National Labor Relations Board for decision. None of the parties filed briefs.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the Hearing Officer's rulings made at the hearing and finds that they are free from prejudicial error. They are hereby affirmed.

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

The petition filed herein by the Employer seeks clarification of a bargaining unit at the Employer's place of business at Fremont, California, which the Board certified in 1965 in behalf of Clerks and Lumber Handlers Union, Local 939, International Hod Carriers, Building and Common Laborers of America, AFL-CIO, herein called Clerks. At issue is whether the specific job classifications of operators of band saws, rip saws, surfacers, planers, and a rafter-cutter are deemed to be in the Clerks' unit or are properly considered to be part of those employees covered by the Millmen's¹ contract.

The Employer and the Clerks have been parties to a series of collective-bargaining agreements, the first of which was entered into in 1959. The employees in the disputed job classifications were covered by the 1959 agreement and by the one which followed it, effective until 1962.

In 1962 the Employer hired two employees who were members of the Millmen's Union, one of whom, Richard Hoteling, because he wished to

protect certain seniority rights he had gained as a member of the Millmen's Union, prevailed upon the Employer to execute a contract with the Millmen's Union. The contract entered into was intended to cover only these two employees, who were classed as detail saw operators, although the contract also contained language recognizing the Millmen as representative of employees "on bench work and the operation of woodworking machinery." At about the same time the Employer again executed a contract with the Clerks which, unlike prior contracts between the parties, did not include the detail saw operator classification now covered by the Millmen's contract.

In 1964 the Millmen, on the basis of the recognition clause of their 1962 contract with the Employer, claimed to be the representative of the cut-off saw operators because they operated woodworking machinery. In response to such claim the Clerks filed a representation petition seeking a unit comprising "all lumber clerks, lumber handlers, mill helpers and cut-off saw operators employed by the Employer at its Fremont, California, yard excluding detail saw operators, all other employees, office clerical employees, guards and supervisors as defined in the Act." The Millmen were also represented on the ballot, and the employees in the job classifications presently in dispute (operators of band saws, rip saws, surfacers, planers, rafter-cutters) were deemed eligible to vote and included in the unit.

The Clerks won the election, and thereafter, on January 25, 1965, the Board certified them as the exclusive bargaining agent for the unit previously described.

Currently, the Millmen, although abandoning their claim for cut-off saw operators, claim to represent other employees operating woodworking machinery, the employee classifications here in dispute. In furtherance of their recognition claim the Millmen picketed the Employer, and thereafter the Employer and the Millmen submitted to arbitration the question of whether the employee classifications in dispute were considered within the Millmen's contract unit. The Clerks Union refused to participate in the arbitration proceedings. On September 7, 1967, an arbitrator's decision issued which concluded that the operation of woodworking machinery other than cut-off saws was to be performed in accordance with the Millmen's agreement.²

As a general rule, in a representation proceeding such as the present one before it, the Board may defer to an arbitrator's award where a question of contract interpretation presented to the arbitrator is in issue and if the arbitration proceeding and result meet the Board's requirements for arbitration

¹Millmen & Cabinet Makers Local Union 55, United Brotherhood of Carpenters & Joiners of America, AFL-CIO, herein referred to as Millmen or the Millmen's Union

²The arbitration award was enforced by the Superior Court of California on September 24, 1968, the day this petition was filed.

awards.³ In this particular controversy, however, the issue involves an interpretation of the scope of the Board certification issued to the Clerks Union in 1965, and thus, concerns a matter uniquely suited to Board determination. It is not a matter to be resolved solely by the arbitrator's — or the Board's — interpretation of a union's contractual provisions.

After review of the facts surrounding the certification, we conclude that the employees in the disputed classifications were included in the unit for which the Clerks Union was certified. We predicate this result upon the facts that, while the employees in the disputed classifications might properly be included in either the unit represented by the Clerks or that represented by the Millmen, it is clear that they were included in the initial contract between the Employer and the Clerks in 1959; that they were included in the unit and were eligible to vote in the election resulting in the Clerks' certification, that they have not been covered in their terms and conditions of employment by the Millmen's contract and that there have been no changes either in methods of operations or in the job classifications, warranting any reconsideration of their status at the present time. As the arbitrator's award would undermine the Board's certification and is repugnant to the statutory policy, we shall not defer to it here. Accordingly, we conclude, contrary to the arbitration award, that the employees in the disputed classification are covered by the Clerks'

certification and are not represented by the Millmen's Union.

There is, moreover, an additional factor for not deferring to the arbitrator's decision. As previously mentioned, the Clerks did not participate in the arbitration proceeding. While it appears that at the arbitration hearing, the Employer asserted a position which is identical with the Clerks' position herein, namely, that the Clerks' Union does represent the employees in disputed classifications, the record is unclear as to how vigorously the Employer asserted this position. In fact, at the hearing following the filing of the instant petition, the Employer claimed to be neutral. Furthermore, it is not clear whether all the pertinent evidence was made available to the arbitrator, particularly the circumstances surrounding the 1965 election and the subsequent certification of the Clerks. In these circumstances, we conclude it would not effectuate statutory policy to defer to the arbitration award.⁴

Therefore, we shall clarify the certification in Case 20-RC-6127 to include the disputed job classifications.

ORDER

It is hereby ordered that the certification heretofore issued to the Clerks and Lumber Handlers Union, Local 939, International Union of Labor and Hod Carriers, AFL-CIO, in Case 20-RC-6127, be, and it hereby is, clarified, by specifically including therein employees engaged in the operation of band saws, surfacers, planers, and rafter-cutters.

³*Raley's Inc.*, 143 NLRB 256

⁴*Cf. Westinghouse Electric Corp.*, 162 NLRB 768, 771 *The Horn & Hardart Company*, 173 NLRB No 164