

In the Matters of JONES LUMBER COMPANY, WEST OREGON LUMBER COMPANY, CLARK & WILSON LUMBER COMPANY, B. F. JOHNSON LUMBER COMPANY, PORTLAND LUMBER MILLS, INMAN-POULSEN LUMBER COMPANY, and EASTERN & WESTERN LUMBER COMPANY and COLUMBIA RIVER DISTRICT COUNCIL OF LUMBER AND SAWMILL WORKERS' UNION No. 5, ETC., *et al.*

Cases Nos. R-290 to R-296, inclusive

Decided October 21, 1937

Lumber Industry—Investigation of Representatives: controversy concerning representation of employees; refusal by employer to recognize and bargain with union until question of representation is determined by Board—*Unit Appropriate for Collective Bargaining:* plant and production employees; functional coherence; history of collective bargaining with employer; eligibility for membership in petitioning union; wage differentials; established labor organizations among employees—*Representatives:* proof of choice; petition designating union as exclusive bargaining agency; applications for membership in union; comparison of said petition and applications with pay roll—*Certification of Representatives:* upon proof of majority representation.

Mr. E. J. Eagen and Mr. Thomas P. Graham for the Board.

Carey, Hart, Spencer & McCulloch, by *Mr. Charles E. McCulloch*, *Mr. Philip Chipman*, and *Mr. Thomas B. Stoel, Jr.*, of Portland, Ore., for the Companies.

Houghton, Cluck & Coughlin, by *Mr. Paul Coughlin*, of Seattle, Wash., for Lumber & Sawmill Workers' Union, Local No. 3.

Mr. C. W. Robison and Mr. Fred Jensen, of Portland, Ore., for United Brotherhood of Carpenters and Joiners of America, Local No. 2532, and International Brotherhood of Teamsters, Chauffeurs, Stablemen and Helpers, Local No. 162.

Mr. Harry Cooper, of counsel to the Board.

DECISION

AND

CERTIFICATION OF REPRESENTATIVES

STATEMENT OF THE CASE

On September 1, 1937, the Columbia River District Council of Lumber and Sawmill Workers' Union No. 5, herein called the Council, on behalf of the Lumber and Sawmill Workers' Union,

Local No. 3, herein called Local No. 3, filed seven separate petitions with the Regional Director for the Nineteenth Region (Seattle, Washington) alleging that questions affecting commerce had arisen concerning the representation of employees of Jones Lumber Company, Clark & Wilson Lumber Company, Portland Lumber Mills, Inman-Poulsen Lumber Company, and Eastern & Western Lumber Company, all of Portland, Oregon, and B. F. Johnson Lumber Company and West Oregon Lumber Company, both of Linnton, Oregon, herein collectively called the Companies, and requesting the National Labor Relations Board, herein called the Board, to conduct an investigation pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On September 6, 1937, the Board, acting pursuant to Section 9 (c) of the Act, and Article III, Section 3 of National Labor Relations Board Rules and Regulations—Series 1, as amended, authorized the Regional Director to conduct an investigation and to provide for an appropriate hearing; and the Board further ordered, pursuant to Article III, Section 10, (c) (2) of the Rules and Regulations—Series 1, as amended, that the seven cases be consolidated for the purposes of the hearing. On September 9, 1937, the Regional Director issued a notice of hearing to be held at Portland, Oregon; on September 16, 1937, copies of which were duly served upon the Companies, upon Local No. 3 and upon the International Brotherhood of Teamsters, Chauffeurs, Stablemen, and Helpers, Local No. 162, herein called the Teamsters, and upon the United Brotherhood of Carpenters and Joiners of America, Local No. 2532, herein called Local No. 2532, labor organizations named in the petitions as claiming to represent employees of the Companies. On September 11, 1937, notice of postponement of the hearing to September 20 was duly served upon the parties.

Pursuant to the notice, a hearing was held at Portland, Oregon, on September 20, 21, and 22, 1937, before William P. Webb, the Trial Examiner duly designated by the Board. Counsel for the Companies appeared only for the purpose of assisting in the introduction in evidence of stipulations between the Board and the Companies, and for the purpose of stating the Companies' position on the matter of representation. Full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties.

During the hearing counsel for the Teamsters and Local 2532 filed a written motion to dismiss the petitions on the grounds (1) that the Board had no jurisdiction for the reason that the members of Local 3 were still members of Local 2532; (2) that the petitions were vague and indefinite and set forth no specific facts; and (3) that Local No. 3 was not a representative within the meaning of

Section 2, subsection (4) of the Act. Ruling upon this motion was reserved by the Trial Examiner. For the reasons set forth in Section III below, the motion is hereby denied. Objections to the introduction of evidence were made during the course of the hearing by counsel for the parties. The Board has reviewed the rulings of the Trial Examiner, and finds that no prejudicial errors were committed. The rulings are hereby affirmed. Subsequent to the conclusion of the hearing Local No. 3 and Local No. 2532 filed briefs which we have considered.

Upon the entire record in the case the Board makes the following:

FINDINGS OF FACT

I. THE COMPANIES AND THEIR BUSINESS¹

The business of all seven companies is the manufacture and sale of lumber and wood products. Jones Lumber Company, West Oregon Lumber Company, B. F. Johnson Lumber Company, Portland Lumber Mills, Inman-Poulsen Lumber Company, and Eastern & Western Lumber Company are all Oregon corporations. Clark & Wilson Lumber Company is a Delaware corporation. B. F. Johnson Lumber Company and West Oregon Lumber Company are located in Linnton, Oregon. The other companies are located in Portland, Oregon. All of the plants are on the Willamette River.

Five of the mills engage in no logging operations. Clark & Wilson Lumber Company does logging in Oregon. Eastern & Western Lumber Company does logging in Oregon and in Washington. All the logs used by Clark & Wilson Lumber Company and Portland Lumber Mills come from Oregon. The following percentages of logs used by the other companies come from Washington:

B. F. Johnson Lumber Company-----	5 per cent
Jones Lumber Company-----	2 per cent
West Oregon Lumber Company-----	5 per cent
Eastern & Western Lumber Company-----	10 per cent
Inman-Poulsen Lumber Company-----	25 per cent

The following percentages of lumber sold by the several Companies go to states outside of Oregon:

Clark & Wilson Lumber Company-----	90 per cent
Eastern & Western Lumber Company-----	85 per cent
Inman-Poulsen Lumber Company-----	70 per cent
B. F. Johnson Lumber Company-----	99 per cent
Jones Lumber Company-----	70 per cent
Portland Lumber Mills-----	75 per cent
West Oregon Lumber Company-----	90 per cent

¹ The facts concerning the Companies and their business are taken from a stipulation between the Board and the Companies, which was introduced in evidence at the hearing Board's Exhibit No. 2.

All plants have railroad sidings in their plants. Cars are loaded directly from shipping sheds or storage yards by employees of the Companies. Ocean-going vessels load at all plants except that of Jones Lumber Company. At the latter plant, barges load at the plant to convey lumber to ocean-going vessels. The Companies sell the following percentages of their lumber to or through brokers located outside of Oregon:

Clark & Wilson Lumber Company.....	40 per cent
Eastern & Western Lumber Company.....	No figures available
Inman-Poulsen Lumber Company.....	Less than 10 per cent
B. F. Johnson Lumber Company.....	10 per cent
Jones Lumber Company.....	7 per cent
Portland Lumber Mills.....	5 per cent
West Oregon Lumber Company.....	40 per cent

The following percentages of lumber are sold to brokers located in Oregon:

Clark & Wilson Lumber Company.....	50 per cent
Eastern & Western Lumber Company.....	No figures available
Inman-Poulsen Lumber Company.....	75 per cent
B. F. Johnson Lumber Company.....	39 per cent
Jones Lumber Company.....	63 per cent
Portland Lumber Mills.....	85 per cent
West Oregon Lumber Company.....	20 per cent

The following percentages of lumber which goes to other states, arrives in those states without reloading from barge, car or truck:

Clark & Wilson Lumber Company.....	98 per cent
Eastern & Western Lumber Company.....	80 per cent
Inman-Poulsen Lumber Company.....	65 per cent
B. F. Johnson Lumber Company.....	89 per cent
Jones Lumber Company.....	40 per cent
Portland Lumber Mills.....	70 per cent
West Oregon Lumber Company.....	85 per cent

II. THE ORGANIZATIONS INVOLVED

A. *Lumber and Sawmill Workers' Union, Local No. 3*

Local No. 3, on whose behalf the Council filed the petitions in this case, is a labor organization affiliated with the International Woodworkers of America, herein called the I. W. A., which is in turn affiliated with the Committee for Industrial Organization, herein called the C. I. O. The Council is an intermediate regional body which acts for approximately 41 local unions similar to Local No. 3. The membership of Local No. 3 is made up of all classes of plant and production employees except office employees of the seven companies named in the petitions.

B. The American Federation of Labor unions

The Teamsters' is a labor organization affiliated with the International Brotherhood of Teamsters, Chauffeurs, Stablemen, and Helpers, which is in turn affiliated with the American Federation of Labor, herein called the A. F. of L. Local No. 2532 is a labor organization affiliated with the United Brotherhood of Carpenters and Joiners of America, herein called the Carpenters, which is in turn affiliated with the A. F. of L.² Local 2532 apparently admits to memberships all plant and production employees. The secretary of Local 2532 testified that its membership, in addition to himself, consisted of "quite a few".

III. THE QUESTION CONCERNING REPRESENTATION

From 1933 to September 1935, the production and plant employees of the Companies were organized in a Federal Union, herein called old Federal Union, directly affiliated with the A. F. of L. In September 1935, the old Federal Union, upon order of the executive council of the A. F. of L., affiliated with the Carpenters. The old Federal Union then became Local No. 2532. During the period of a year before July 1937, Local No. 2532 was affiliated with an intermediate regional body, the Columbia River District Council of Lumber and Sawmill Workers, herein called old Council, and was represented by an international organization, the Federation of Woodworkers, herein called the F. of W. The old Council and F. of W. operated within the Carpenters.³

The old Federal Union had been promised an international charter by the A. F. of L. Members of Local No. 2532 testified that they were dissatisfied with the alleged organizational inactivity of the Carpenters. The seating of delegates from Local No. 2532 and other locals within the F. of W. was objected to at the Carpenters' Florida convention held at Lakeland, Florida, in December 1936. It also appears that Local No. 2532 was involved in jurisdictional disputes within the A. F. of L. and was dissatisfied with its lack of autonomy within the Carpenters' organization.

On June 7, 1937, the F. of W. passed a resolution providing for a ballot of its membership on the question of affiliation with the C. I. O. On June 19, 1937, Local No. 2532, upon motion duly made, unanimously concurred in this resolution. Thereafter the members of Local No. 2532 registered their desire for affiliation with the

² It is not clear from the record whether Local No. 2532 is a continuation of the organization known as Local 2532 prior to August 14, 1937, or whether it is a new organization. The secretary of Local 2532 testified that Local 2532 had not yet received a charter from the Carpenters at the time of the hearing.

³ The old Council later affiliated with the I. W. A. and became the Council.

C. I. O. by a vote of approximately 1700 to 400. The ballots were counted at the Tacoma convention of the F. of W. in the middle of July, together with ballots from other locals. The F. of W. at this convention passed a resolution for affiliation with the C. I. O. by a vote of approximately 365 to 70. A charter from the C. I. O. was installed at this convention, whereupon the body theretofore known as the F. of W. became the I. W. A. Local No. 2532 applied for a charter from the I. W. A. which was received on August 5, 1937. On August 14, 1937, after considerable discussion and upon a motion duly made, the charter was installed. Thereupon the employees theretofore members of Local No. 2532 became members of Local No. 3.

It is the contention of counsel for the Teamsters and Local No. 2532 that the members of Local No. 2532 never affiliated with the I. W. A. No evidence of any consequence was offered in support of this contention.

There is testimony in the record that Mr. Jones of the Jones Lumber Company stated that he would close his plant if his employees became affiliated with the C. I. O. On August 16, 1937, and within three or four days thereafter, all the plants concerned herein except one were closed down, the evidence showing that the plants were each picketed by one A. F. of L. picket. On August 23, 1937, Local No. 3 notified the Companies that the organization representing their employees had been changed from Local No. 2532 to Local No. 3 and that the employees were ready to continue to work under the terms existing previous to August 14, 1937.

Charges under the Act were filed by Local No. 3 against the Companies with the Regional Director of the Nineteenth Region and a conference took place in his office on August 27, 1937. At this meeting local representatives of the A. F. of L. presented written documents stating their refusal to meet with Local No. 3. Local No. 3 requested that the plants be opened. An understanding was reached at the conference whereby the Companies agreed to resume operations August 30, 1937, and to leave the question of representation to the Board. The plants were opened August 30, 1937. The mills ran the week of August 30, 1937, and then started to close down, one at a time. At the time of the hearing all were closed except the Inman-Poulsen Lumber Company.

Local No. 3 claims to represent 90 per cent of the plant and production employees except office employees in each of the seven companies. The Teamsters and Local No. 2532 are named in the petition as also claiming to represent these employees.⁴

⁴ It appears from the record that a controversy exists between the Teamsters and Local No. 2532 which is strictly jurisdictional and is therefore outside the scope of this decision.

Counsel for the Companies stated twice during the hearing that the Companies would not deal with any organization until the question of representation was settled, and that the Companies were willing to recognize the organization certified by the Board.

We find that a question has arisen concerning the representation of the employees of the Companies.

IV. THE APPROPRIATE UNITS

The Eastern & Western Lumber Company has a total of approximately 452 production and plant employees, inclusive of approximately 9 foremen and exclusive of office employees. The Inman-Poulsen Lumber Company has a total of approximately 596 such employees, inclusive of approximately 18 foremen and exclusive of office employees. The total for the latter company also excludes about 40 construction millwrights who at the time of the hearing were employed on a temporary construction job at the plant. The Clark & Wilson Lumber Company has a total of approximately 620 plant employees, inclusive of approximately 9 foremen and approximately 20 employees in the shingle mill and exclusive of office employees. The Jones Lumber Company has a total of approximately 269 production and plant employees, inclusive of approximately 3 foremen and exclusive of office employees. The West Oregon Lumber Company has a total of approximately 391 production and plant employees, inclusive of approximately 16 foremen and exclusive of office employees. The Portland Lumber Company has a total of approximately 184 production and plant employees, inclusive of approximately 6 foremen and exclusive of office employees. The F. B. Johnson Lumber Company has a total of approximately 60 production and plant employees; inclusive of 2 foremen and exclusive of office employees.

The Eastern & Western Lumber Company has the following main departments: (a) sawing, (b) planing mill, (c), dry kiln, (d) storage, yards and sheds, (e) lath-mill, (f) shipping, (h) sales, (i) fuel, (j) retail. The other companies have in general similar departments. The Clark & Wilson Lumber Company has the only shingle mill. The Jones Company does not have a fuel department. The West Oregon Company has neither a lath mill nor a retail department. The Portland Lumber and F. B. Johnson Companies have neither a dry-kiln nor a lath-mill.

All departments are necessary for the completion of the lumbering operation from the time the log is taken from the river to the time the lumber is ready for shipment or retail sale. The operations in the plants have a functional coherence.

All classes of plant and production employees, including foremen, with the exception of office employees and supervisory employees other than foremen, and in the case of the Clark & Wilson Lumber Company with the exception of the shingle-weavers, bargained with the Companies through the old Federal Union and Local No. 2532 prior to August 14, 1937.

All classes of the aforesaid employees are members of Local No. 3.⁵

Local No. 3 claims that the appropriate units for the purposes of collective bargaining are the plant and production employees, including foremen, of each company, with the exception of office employees and supervisory employees other than foremen. The only objection to this contention took the form of objection by counsel for the A. F. of L. unions to admission of testimony regarding the appropriateness of the retail department employees of the Eastern & Western Lumber Company in the claimed bargaining unit. It appears that the retail department is an integral part of the plant. It further appears that employees of that department have sometimes worked in other departments. The retail employees have always bargained through the same organizations which represented the other employees. The employees of the retail department will therefore be included in the bargaining units.

No other objection to the claim of Local No. 3 is made. Local No. 3 asks that the foremen be included in the bargaining units. Foremen have in the past bargained through the same organizations which represented the other employees. Foremen are members in Local No. 3. No objection being made, the foremen will be included in the bargaining units.

Local No. 3 does not claim the temporary construction millwrights employed by the Inman-Poulsen Lumber Company. Furthermore, it does not claim the shingle-weavers employed by the Clark & Wilson Lumber Company. There is testimony that the shingle-weavers have their own log pond, that their work is altogether different from that of the other employees, and that their rates of pay are different. The shingle-weavers have a union of their own. For the above reasons the temporary construction millwrights employed by the Inman-Poulsen Lumber Company and the shingle-weavers employed by the Clark & Wilson Lumber Company will not be included in the bargaining units.

In order to insure to the employees of the Companies the full benefit of their right to self-organization and collective bargaining, and otherwise to effectuate the policies of the Act, we find that all of the plant and production employees of each Company, including foremen, except office employees and supervisory employees other than

⁵In the case of the Jones Lumber Company, however, it was testified that "the mill foreman" does not belong to Local No. 3

foremen, and in the case of the Inman-Poulsen Lumber Company, except the temporary construction millwrights, and in the case of the Clark & Wilson Lumber Company, except the shingle-weavers, constitute units appropriate for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

V. EFFECT OF THE QUESTION OF REPRESENTATION ON COMMERCE

We find that the question of representation which has arisen, in connection with the operations of the Companies described in Section I above, has a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and has led and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

VI. THE EXCLUSIVE BARGAINING AGENCY

At the hearing petitions designating Local No. 3 as the exclusive bargaining agency and signed by employees of the several Companies were introduced. All signatures on the petitions were witnessed by employees. The latter signed as witnesses, and at the hearing identified the petitions, testified that they witnessed the signatures, and that they knew the persons who signed to be employees of the company in question. The petitions were signed from a week to ten days before the hearing. Counsel for the A. F. of L. objected to the admission of the petitions on the ground that they were self-serving declarations. We find no merit in this objection. The petitions appear entirely authentic.

Signed application cards for membership in Local No. 3 were also introduced at the hearing. Counsel for the A. F. of L. objected to the admission of these cards on the grounds that they were not dated, that the signatures on them were not witnessed, and that they had not always been in the possession of the secretary of Local No. 3 who identified them. It was testified, however, that the cards were signed subsequent to the installation of a charter by Local No. 3. It also appears that the cards have always been in the possession of the secretary of Local No. 3 or in the possession of the secretary of the Council.

There was also introduced at the hearing in the form of a stipulation between the Companies and the Board, pay rolls of the several Companies. These pay rolls contain lists of the plant and production employees of the Companies as of the two-week period immediately preceding the first shut-down of the plants.

A comparison of the petitions and the pay rolls shows that in each Company a substantial majority of the plant and production employees have designated Local No. 3 as their representative for the

purposes of collective bargaining. A comparison of the application cards and the pay rolls merely confirms this finding. The evidence clearly reveals the following results:

EASTERN & WESTERN LUMBER COMPANY

Number employees on pay roll.....	452
Number employees on pay roll signing petitions.....	276
Majority	61 per cent
Number employees on pay roll signing cards.....	332
Majority	74 per cent
Number employees on pay roll signing <i>both</i> petitions and cards..	232

JONES LUMBER COMPANY

Number employees on pay roll.....	269
Number employees on pay roll signing petitions.....	174
Majority	64 per cent
Number employees on pay roll signing cards.....	184
Majority	68 per cent
Number employees on pay roll signing <i>both</i> petitions and cards..	138

INMAN-POULSEN LUMBER COMPANY

Number employees on pay roll.....	596
Number of employees on pay roll signing petitions.....	515
Majority	86 per cent
Number employees on pay roll signing cards.....	532
Majority	89 per cent
Number employees on pay roll signing <i>both</i> petitions and cards....	512

B. F. JOHNSON LUMBER COMPANY

Number employees on pay roll.....	60
Number employees on pay roll signing petitions.....	45
Majority.....	75 per cent
Number employees on pay roll signing cards.....	53
Majority.....	88 per cent
Number employees on pay roll signing <i>both</i> petitions and cards....	43

PORTLAND LUMBER MILLS

Number employees on pay roll.....	184
Number employees on pay roll signing petitions.....	136
Majority	74 per cent
Number employees on pay roll signing cards.....	152
Majority.....	83 per cent
Number employees on pay roll signing <i>both</i> petitions and cards....	139

WEST OREGON LUMBER COMPANY

Number employees on pay roll.....	391
Number employees on pay roll signing petitions.....	344
Majority.....	88 per cent
Number employees on pay roll signing cards.....	319
Majority.....	82 per cent
Number employees signing <i>both</i> petitions and cards.....	304

CLARK & WILSON LUMBER CO.

Number employees on pay roll (exclusive of shingle-weavers)-----	515
Number employees on pay roll signing petitions-----	421
Majority -----	81 per cent
Number employees on pay roll signing cards-----	475
Majority -----	92 per cent
Number employees on pay roll signing <i>both</i> petitions and cards-----	475

Counsel for the Companies suggested that they would prefer elections conducted by the Board, rather than certifications without elections. However, in view of the majorities found on the basis of the petitions, no secret ballot is necessary. The application cards corroborate the evidence. We therefore will certify Local No. 3 as the exclusive representative of the plant and production employees, including foremen, of each company, except supervisory employees other than foremen and except office employees; and in the case of the Inman-Poulsen Lumber Co., except the temporary construction millwrights; and in the case of the Clark & Wilson Lumber Co., except the shingle-weavers.

CONCLUSIONS OF LAW

Upon the basis of the above findings of fact, the Board makes the following conclusions of law:

1. Questions affecting commerce have arisen concerning the representation of the employees of each of the Companies, within the meaning of Section 9 (c), and Section 2 (6) and (7) of the National Labor Relations Act.

2. All of the plant and production employees of each of the Companies, including foremen, except office employees and supervisory employees other than foremen; and in the case of the Inman-Poulsen Co., except the temporary construction millwrights; and in the case of the Clark & Wilson Lumber Co., except the shingle-weavers, constitute units appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

3. Lumber and Sawmill Workers' Union, Local No. 3, having been designated for the purposes of collective bargaining by a majority of the employees in the aforesaid units, is, by virtue of Section 9 (a) of the National Labor Relations Act, the exclusive representative of all the employees in such units for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

CERTIFICATION OF REPRESENTATIVES

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, 49 Stat. 449, and pursuant to Article III, Section 8 of National Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that Lumber and Sawmill Workers' Union, Local No. 3, has been designated and selected by a majority of all the plant and production employees, including foremen, of Jones Lumber Company, West Oregon Lumber Company, Clark-Wilson Lumber Company, B. F. Johnson Lumber Company, Portland Lumber Mills, Inman-Poulsen Lumber Company, and Eastern and Western Lumber Company, excluding office employees and supervisory employees other than foremen; and in the case of the Inman-Poulsen Co., excluding the temporary construction millwrights; and in the case of the Clark-Wilson Co., excluding employees in the shingle-mill, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the Act, Lumber and Sawmill Workers' Union, Local No. 3, is the exclusive representative of all such employees of each company within the appropriate units, for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.