

In the Matter of RED RIVER LUMBER COMPANY and LUMBER AND SAWMILL WORKERS UNION LOCAL NO. 53 OF INTERNATIONAL WOODWORKERS OF AMERICA <sup>1</sup>

Case No. R-246.—Decided February 26, 1938

*Lumber Industry—Investigation of Representatives:* controversy concerning representation of employees: rival organizations; question concerning representation not resolved by agreement recognizing one of rival organizations as exclusive representative of employees; majority representative status of such organization doubtful despite membership majority because of encouragement of membership by employer influence; controversy as to appropriate bargaining unit—*Unit Appropriate for Collective Bargaining:* employer unit; no controversy as to inclusion of employees in sawmill and logging camps in unit; employees of independent logging and railroad contractors excluded; factory and office clerical employees excluded—*Election Ordered:* exclusive representation contract not a bar to, where such contract by its terms is made subject to the provisions of the Act

*Mr. John P. Jennings*, for the Board.

*Mr. J. Paul St. Sure*, of Oakland, Calif., and *Mr. Mark Schultz*, of Westwood, Calif., for the Company.

*Mr. Clifford Willett*, of Westwood, Calif., for the United.

*Gladstein, Grossman & Margolis*, by *Mr. Aubrey Grossman*, of San Francisco, Calif., for the United and the I. W. A.

*Mr. Lamar Tooze*, of Portland, Oreg., for the I. E. U. local and the I. E. U., Inc.

*Mr. Hardin Barry*, of Susanville, Calif., and *Mr. Ralph C. Martin* and *Mr. Calvin Grey*, of Westwood, Calif., for the I. E. U. local.

*Mr. R. J. Brooks* and *Mr. Harry See*, of San Francisco, Calif., for the Trainmen.

*Mr. K. B. Walton* and *Mr. S. C. Phillips*, of Los Angeles, Calif., for the Firemen.

*Mr. Millard L. Midonick*, of counsel to the Board.

<sup>1</sup> A petition for investigation and certification of representatives in this matter was originally filed by United Woodworkers Local Industrial Union No. 38. In accordance with a petition, supported by evidence establishing that Lumber and Sawmill Workers Union Local No. 53 of International Woodworkers of America is identical with the original petitioner except in name, we hereby substitute Lumber and Sawmill Workers Union Local No. 53 of International Woodworkers of America as petitioning party herein, and we amend the designation of petitioner in accordance with its change of name

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

On May 28, 1937, United Woodworkers Local Industrial Union No. 38, herein called the United, filed with the Regional Director for the Twentieth Region (San Francisco, California) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Red River Lumber Company, Westwood, California, herein called the Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. On July 9, 1937, the National Labor Relations Board, herein called 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, ordered an investigation and authorized the Regional Director to conduct it and to provide for an appropriate hearing upon due notice.

On July 26, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the United, upon Industrial Employees Union, Local 1, District 14, herein called the I. E. U. local, and upon Brotherhood of Railroad Trainmen, herein called the Trainmen, the latter two being labor organizations claiming to represent employees directly affected by the investigation. Pursuant to the notice, a hearing was held on August 5, 6, and 7, 1937, at Susanville, California, before Clifford D. O'Brien, the Trial Examiner duly designated by the Board. A motion to intervene made at the hearing on behalf of Brotherhood of Locomotive Firemen and Enginemen, herein called the Firemen, a labor organization also claiming to represent employees directly affected by the investigation, was granted by the Trial Examiner. The Board, the Company, the United, the I. E. U. local, Industrial Employees Union, Inc., herein called the I. E. U., Inc., with which the I. E. U. local is affiliated, the Trainmen, and the Firemen were represented either by counsel or by a union officer and participated in the hearing.

On November 8, 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, ordered the investigation to be continued and authorized the Regional Director to conduct a further hearing in this matter. On November 10, 1937, Lumber and Sawmill Workers Union Local No. 53 of International Woodworkers of America, herein called the I. W. A., filed a petition requesting to be substituted as the petitioning party in this proceeding. On November 10, 1937, the Regional Director issued a notice of

further hearing, copies of which were duly served upon the Company, upon the I. E. U. local, upon the I. E. U., Inc., and upon the Trainmen. Pursuant to the notice, a hearing limited to receiving evidence concerning the change of name and affiliation of the United was held on November 18, 1937, before Henry Eickhoff, the Trial Examiner duly designated by the Board. The Board, the Company, the United, the I. W. A., and the I. E. U. were represented by counsel or a union official and participated in the hearing.

Full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties at both hearings. During the course of the first hearing the Trial Examiner made several rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner and finds that no prejudicial errors were committed. The rulings are hereby affirmed. During the course of the second hearing, no motions were made, and no objections were taken to the admission of evidence.

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

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE COMPANY

Red River Lumber Company is a corporation organized and existing since December 1, 1884, under the laws of the State of Minnesota. The Company is engaged in a vast lumber enterprise centered at the Company town of Westwood, Lassen County, in the northern portion of the State of California. It owns large tracts of timber all located in California, and its lumber mill at Westwood covers an area approximately a mile long and half a mile wide. The Company owns a private railroad and rolling stock used to haul logs to its plant. In all its operations at or contributory to its Westwood plant, the Company employs approximately 2,173 non-supervisory employees including clerical workers in factory and office. In addition approximately 236 men, who are engaged in logging operations on Company properties, are employed by contractors operating under contract with the Company, and approximately 100 are employed by another contractor in the operation of the Company railroad and in car repairs, section work, etc.

The operations carried on at or contributory to the Westwood plant consist of logging, transporting the logs to the plant, and there manufacturing the logs into lumber, sash, cutstock, pencil slats, moulding and siding, and veneer, all of which is sorted, surfaced, and shipped. A moulding mill, box factory, and plywood plant are also operated here. Until the 1935 season, all of the logging, transporting, and manufacturing operations were performed by the Company directly.

Most of the logging and all of the transporting are now done by contractors.

The normal annual capacity of the Westwood plant is slightly over 200,000,000 feet per year. The gross sales of the Company for the half-year from January 1 to June 30, 1937, amounted to \$3,448,603.29. The plant is one of the four largest in the Western Pine region.

The principal raw material consumed in the conduct of the business of the Company is the timber—pine, Douglas fir, and cedar—which is derived from its own properties, and formerly to a slight extent from government properties, located wholly within the State of California. Machinery purchases by the Company for the Westwood operations from January 1, 1936 to June 30, 1937, totaled \$314,243.87; substantially all these purchases were shipped to Westwood from points without the State of California. However, purchases of materials and supplies other than machinery during the same period, and amounting to \$326,611.80, were made within the State of California.

More than 75 per cent by measure of the Company's product was shipped during 1936 to 44 States other than California and to Canada, England, and Germany. From January 1 to June 30, 1937, more than 78 per cent both by measure and by value of the Company's product was shipped to 43 States other than California, to the District of Columbia, and to Canada, France, Switzerland, Germany, and Mexico. More than 90 per cent of the product is shipped by rail in carloads. Westwood is served by two interstate carriers, the Southern Pacific and Western Pacific Railroads, the tracks of which connect directly with those of the Company's private railroad.

The major portion of the sales of the Company are handled through wholesalers and commission men not in its employ. Sales offices are maintained, however, in Westwood, San Francisco, and Los Angeles, California, in Minneapolis, Minnesota, in Chicago, Illinois, and in New York City for the purpose largely of supplying service to wholesalers and commission men in the districts served. An assembling and distributing yard is maintained in Chicago, Illinois, a retail and distributing yard in Reno, Nevada, and an assembling and distributing plant in Los Angeles, California. The Company has a trade-mark registered for use in interstate commerce.

## II. THE ORGANIZATIONS INVOLVED

United Woodworkers Local Industrial Union No. 38 was a temporary local labor organization directly affiliated with the Committee for Industrial Organization, admitting to its membership a vaguely defined industrial group of workers engaged in the operations at or contributory to the Westwood plant. Its policy has been to admit lumbermen, railroad employees, and the non-supervisory employees in the Westwood plant generally, including factory clerical workers, but excluding office clerical employees. After the original hearing,

the Committee for Industrial Organization chartered an international union, called International Woodworkers of America, with jurisdiction over the workers who were members of the United. On August 26, 1937, the United obtained a charter from and voted to affiliate with the I. W. A. as its Lumber and Sawmill Workers Union Local No. 53. The United local and the I. W. A. affiliate which has succeeded it are identical in all respects except for the change of name and for its present indirect, rather than direct, affiliation with the Committee for Industrial Organization. The I. W. A. is a labor organization.

Industrial Employees Union, Local No. 1, District 14, is a labor organization affiliated with Industrial Employees Union, Inc., a corporation whose locals are scattered through the lumber industry in the Northwest. The I. E. U., Inc., until May 1937, went under the name of Loyal Legion of Loggers and Lumbermen, herein called the 4 L's. At that time the 4 L's, a corporation, changed its name to the I. E. U., Inc., and reorganized its corporate structure to the extent of securing supplemental articles of incorporation eliminating employers from its membership. The I. E. U. admits to its membership in its capacity as a labor organization all employees of the Company in the Westwood plant, all clerical employees whether in the main office of the plant, employees working on the Company's railroad system, and those working for contractors in the logging operations supplying the Company. Executives, superintendents, and foremen are excluded.

Brotherhood of Railroad Trainmen is a labor organization which is unaffiliated with any organization. It admits to its membership the group of employees on the Company's railroad assigned to the moving of cars or other vehicles designed for the transportation of property by motive power, upon fixed rails, except those operating such motive power.

Brotherhood of Locomotive Firemen and Enginemen is a labor organization which is also unaffiliated with any organization. It admits to its membership those employees on the Company's railroad who operate its motive power.

### III. THE QUESTION CONCERNING REPRESENTATION

Bargaining between the Company and the 4 L's had resulted in an agreement of several years' standing covering the terms and conditions of employment of the employees of the Company. When it was decided, shortly after the rulings of the Supreme Court of the United States upholding the constitutionality of the Act, to reorganize the 4 L's into the I. E. U., Inc., the duration of the existing agreement between the Company and the 4 L's was deemed limited by the imminent disappearance of the 4 L's as an entity. On May 13,

1937, on the eve of the 4 L's reorganization, the Company entered into a "Temporary Working Agreement"<sup>2</sup> with the 4 L's designed to be effective until a more complete working agreement should be negotiated between the Company and the successor to the 4 L's. This agreement embodied recognition of the 4 L's as the exclusive bargaining agency for the "Company's employees at Westwood" whether under that name or under a new name to be adopted. It provided for its own automatic termination whenever the Company or the Board should determine that the 4 L's or its successor was not the legally constituted collective bargaining agency for the employees covered by that agreement. Thereafter and within a short period of time the 4 L's local was succeeded by the I. E. U. local and negotiations were promptly begun with the latter organization as the exclusive bargaining agency looking toward a permanent and more detailed agreement. Such an agreement<sup>3</sup> had been tentatively fixed upon, published, and was being circulated among the employees of the Company at the time of the hearing, although the evidence discloses that it had not been executed. It seems highly probable that this agreement is now in effect. The agreement specifies that the Company recognizes the I. E. U. local "as the sole collective bargaining agency for Company's employees at its Westwood operation subject to Federal and State laws and regulations." It is terminable by either party on 30 days' written notice. It further provides that it shall automatically terminate if and when the "National Labor Relations Board . . . finds that Union is not the authorized exclusive collective bargaining agency for Company's employees at its Westwood operation."

The question concerning representation is injected into this situation by the rise early in May 1937 of the organization chartered by the Committee for Industrial Organization on May 17, 1937, as the United. Organizational mass meetings attended by hundreds of employees expressed the unrest among the workers and the dissatisfaction of a substantial number with representation by the I. E. U. local. The movement gained such impetus by May 12, 1937, that at meetings of the I. E. U. local on that day an unofficial election by secret ballot was conducted with printed ballots listing four unions.<sup>4</sup> The results were tabulated as follows:

I. E. U.....	511
C. I. O.....	532
A. F. of L.....	18 <sup>5</sup>
Local Union.....	94 <sup>5</sup>
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Total ballots cast.....	1155

<sup>2</sup> Board's Exhibit No. 15.

<sup>3</sup> I. E. U.'s Exhibit No. 2.

<sup>4</sup> I. E. U.'s Exhibit No. 1.

<sup>5</sup> Nothing further is to be found in the record concerning these two unions. Presumably they no longer claim to represent employees of the Company.

On the basis of the plurality thus obtained, the United made claim to the Company that it should recognize the United as representing a majority of employees. The Company took the position that, inasmuch as the I. E. U. local had a membership roll representing more than 50 per cent of the employees in question, and until the United could show that it had a greater membership than the I. E. U. local, or was certified by the Board, the management would continue to recognize the I. E. U. local as a bargaining agent. In point of fact, it appears that the United has never succeeded in bargaining with the Company at all, but that the I. E. U. local has been treated as the exclusive bargaining representative, at least up to the time of the hearing.

Of approximately 2,000 employees of the Company in the unit we deem appropriate, the evidence indicated that the I. E. U. local's membership numbered approximately 1,600 to 1,800 and that the membership and applications for membership in the United amounted to approximately 300 to 400. It was testified that there is a certain amount of dual membership. More important, we are convinced from the record that a large number of employees, possibly numbering 1,000, other than those now members of the United, have given oral expression to organizers of their desire to be represented by the United and have promised to vote for the United in the event of a secret ballot. Almost all of those who have expressed this sentiment were members of the I. E. U. local who declined to withdraw from it for fear of incurring the Company's displeasure<sup>6</sup> and who preferred not to join and contribute dues to the United until it should be recognized as a bargaining agency. The few expressing the same sentiment who did not belong to any labor organization advanced the latter reason for declining to apply for admission to the membership of the United.

The demand for recognition presented by the United and the Company's refusal to accede to the demand, indicate *prima facie* under the circumstances described above that a question has arisen concerning representation. That question is neither foreclosed nor resolved by the membership of a majority of the employees in the I. E. U. local. That union had once clearly been a labor organization dominated, interfered with, and supported by the Company.<sup>7</sup> Certainly the belief that such unlawful Company influence persisted at the time of the hearing was prevalent among the body of employees, and it is evident that as a consequence a substantial number of employees feared to withdraw from membership in the I. E. U. even though some were members of the United and desired to be represented by that organization. This state of mind is the more reasonable and understandable in view of the Company "check-off" of I. E. U.

<sup>6</sup> The grounds for this fear on the part of employees is discussed *infra* under Section VI.

<sup>7</sup> See discussion *infra* under Section VI.

local dues, the mechanics of which necessarily bring a withdrawal from the I. E. U. local to the Company's attention at all subsequent pay-roll dates.

Nor is the question concerning representation foreclosed by the agreement, to which we have previously referred, wherein the I. E. U. local is named as the exclusive bargaining agent, because it also provides (1) that it is binding upon the Company for 30 days at the most, and (2) that it is automatically terminated if and when the Board finds the I. E. U. local not to be the designated exclusive bargaining agency.<sup>8</sup>

The situation concerning representation among employees of the Company is tense, and, unless the Board intervenes, the unsettled question concerning representation which has arisen may lead rapidly to industrial strife.

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

#### IV. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION UPON COMMERCE

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

#### V. THE APPROPRIATE UNIT

Both the I. W. A. and the I. E. U. local, the only unions before us which draw their membership from the entire plant, agree that the nucleus of an appropriate unit consists of the production and maintenance employees in the Westwood plant. The Trainmen and the Firemen, the two craft unions involved, are not interested in such production and maintenance employees and make no objection in this regard. Differences arise, however, between the two industrial unions, and between them and the craft unions, in considering the propriety of adding to the nucleus the other smaller groups composed of railroad workers and clerical employees, and a separate problem is presented with respect to lumbermen.

Both the I. W. A. and the I. E. U. local favor the inclusion of lumbermen, and on this point there is no opposition from the other unions which are parties to this proceeding. In view of this unanimity, of the functional integration of all the operations contributing to the Westwood plant, and of the eligibility of lumbermen to both industrial unions and the membership of some in each, and in the

<sup>8</sup> I. E. U.'s Exhibit No. 2.

absence of any facts brought forward at the hearing which would indicate that this inclusion is improper, we will so hold,<sup>9</sup> but only as to those lumbermen who are employed by the Company.

The problem arises as to whether the lumbermen who work under the logging contractors are employed by the Company or by the contractors. If the Company is not the employer, we will not include such lumbermen in the unit appropriate for purposes of collective bargaining with the Company.<sup>10</sup> Similarly, if the railroad contractor is the employer of the men working on the railroad, we will not include those men in the industrial unit or in the craft units requested by the Trainmen and the Firemen as the appropriate unit for the purposes of collective bargaining with the Company.

All logging contractors undertake to perform the entire logging operation in separate localities on the Company's property. These contractors can be divided, according to the nature of their contracts, into Group 1 and Group 2. There are approximately 210 persons employed by Group 1 contractors<sup>11</sup> who operate under written agreements similar to the one set forth in Board's Exhibit 8. Contracts of the Group 1 type were all made for the first time during the 1937 season. The Company exercises no control whatever over hiring, discharging, supervision, or terms or conditions of employment affecting those employed by Group 1 contractors. Such contractors expressly assume all expenses of workmen's compensation insurance and all the contributions or taxes relative to unemployment insurance and old-age pensions. Lumbermen employed by them are paid by checks of the contractor. The contractors in this group have taken over the Company's former obligation of deducting union dues from the wages of the I. E. U. local members among their employees and paying over the sums to the I. E. U. local.

There are approximately 26 persons employed by Group 2 contractors.<sup>12</sup> The type of contract<sup>13</sup> and the customs of the parties in this

<sup>9</sup> *Matter of Stimson Lumber Company and Lumber and Sawmill Workers, Glenwood Local No. 2540*, 2 N L R B 568. But cf. *Matter of Bales-Coleman Lumber Company and Puget Sound District Council of Lumber and Sawmill Workers*, 4 N L R. B 679, where lumbermen were excluded from a similar unit for the reasons that the only Union involved had never organized them and did not desire to represent them, that the situs of their work was so far distant as to hamper active participation in collective activity, as well as for the difference between the type of work performed by such lumbermen and the factory and mill employees; compare *Matter of Jones Lumber Company, et al* and *Columbia River District Council of Lumber and Sawmill Workers' Union No 5, etc., et al.*, 3 N L R B 855, where lumbermen, employed by two of the seven companies there involved, were not included in a similar unit for like considerations.

<sup>10</sup> *Matter of Pennsylvania Salt Manufacturing Company and Local Union No. 13055 of District No 50, United Mine Workers of America*, 3 N L R B 741.

<sup>11</sup> Contractors in this group as of August 1, 1937, are listed as follows: Sam Dotson, J. G. Ogburn, L. F. Aneacher, and Charles Evans. L. R. Lambert and A. J. Rowley apparently operate under similar contracts with a partially owned subsidiary of the Company, and will therefore not be considered.

<sup>12</sup> Contractors in this group as of August 1, 1937, are listed as follows: Roy Rea, Gus Yutz, Henry King, and W. B. Barbee.

<sup>13</sup> A representative contract of this group is set forth in Board's Exhibit No. 9.

group are substantially similar to the particulars hereinafter set forth with respect to T. R. Wills, the sole contractor for the operation of the Company railroad.

The Wills Contract<sup>14</sup> was first executed during the 1936 season. By the terms of this contract, Company locomotives are rented to Wills, but Company tools are lent and electric power supplied free of charge. The price term of Wills' contract is measured by the length of the haul and the quantity of logs carried. In the Wills as well as the Group 2 loggers contracts, one clause provides that: "As additional remuneration for Contractor, Company will pay Employer's share of Social Security Act, Old Age Pension and Unemployment Insurance charges." The Wills and Group 2 contracts further contain the following identical clauses: "In order to comply with Section 8, subsection B of the California Workmen's Compensation Act, which Section defines 'Employees' in a broader sense than is recognized by law in other fields, the parties hereto stipulate that, for the purpose of Workmen's Compensation only, and for no other purpose, and solely in conformity with Section 8, subsection B, there shall be a presumption of employment of Contractor's employees by Company." As further provided by contract, the Company has the privilege, formerly exercised, of paying the contractor's employees with its own check and debiting the amount on its account with the respective contractors. It is clear that the payment of wages by Company check was merely a device used to eliminate any risk of potential labor liens on the Company's property. That practice was in fact discontinued in May 1937, and all pay checks for all contractors' men have since been by check of the contractor. However, unlike the practice with respect to Group 1 pay-roll deductions, the I. E. U. local is still receiving the "check-off" for dues of its railroad members on checks drawn by the Company. But in view of the fact that the Company debits its running account with Wills to the extent of the amounts thus paid, this aspect of the case seems to be merely a book-keeping arrangement and of little significance. As for the social security and workmen's compensation payments, they do not, without more, make the Company the employer of the men involved, for the purposes of the Act.

With respect to Wills and the Group 2 contractors, the employment or continuance in employment of those whom the contractor desires to hire is subject to the disapproval of the Company. Discharges are reported to the Company for its records, but are not subject to its approval. Nevertheless, the course of practice under these contracts has been to allow the contractors full control of their personnel and the Company rarely, if ever, exercises its right to disapprove. There is no understanding or contract of any kind

<sup>14</sup> Board's Exhibit No. 7.

between Wills and the Company regarding the wages or the hours or other terms or conditions under which his men shall work. Such a state of affairs is consistent with the testimony of T. S. Walker, an official of the Company with authority in these matters, that in the event of abuses by Wills in respect to wages or hours, the Company would take steps in behalf of the railroad men despite the absence of any breach of contract and presumably for its own ends. And we cannot conclude merely from the Company's power to terminate the Wills contract without cause on ten days' written notice, or sooner upon the payment of a small sum of money,<sup>15</sup> that it has effectual control over the wages, hours, or other conditions of employment of these employees.

Moreover, it is expressly stated in the Wills railroad contract as well as in the Group 1 and Group 2 loggers contracts that "at all times Contractor's relationship to Company shall be that of an independent Contractor and not that of employee, agent or servant of Company." The Wills contract further states: "Contractor's employees shall be under Contractor's supervision and control and shall not be considered as employees, agents or servants of Company."

Finally, although the Company has had comprehensive agreements since 1933 with the 4 L's and its successor the I. E. U. local, covering among others all the groups of employees under discussion, it is uncontroverted that both parties to the agreements treated the men working for all the contractors as outside the scope of those, or any, agreements with the Company because such men were no longer employees of the Company. Apparently, there has been no bargaining whatsoever in behalf of those in the employ of the logging contractors despite the fact that the I. E. U. local purports to represent those men still. The I. E. U. maintains that it will bargain in behalf of those men if their complaints should give rise to the occasion and that heretofore bargaining in their behalf has been unnecessary inasmuch as general wage increases by the Company to its employees, notably the one of ten per cent during the 1937 season, have invariably been adopted by the contractors as to their employees. Ralph Martin, chairman of the Conference Committee of the I. E. U.—the only agency purporting to represent employees which is experienced in bargaining with the Company—testified that Wills was contacted in 1936 at the time he took over the railroad as a contractor, and, although no contract was made, Wills assured the Committee that he was abiding by the agreement which until then covered the railroad men. Martin further testified that in the event of dissatisfaction among the railroad men, bargaining would be carried on with Wills as their employer. If unsuccessful with Wills, Martin testified that he believed his next step would be to present the problems to the man-

<sup>15</sup> Board's Exhibit No. 7. paragraph 10.

agement of the Company, but in such an event it is very probable that if the Company interested itself at all it would do so as one having economic rather than legal power over the employer of the railroad men.<sup>16</sup>

Taking all these factors together, we cannot find the Company to be the employer of any of the men working under the contractors. We will direct, therefore, that those working for contractors under contract with the Company be excluded from the unit appropriate for purposes of collective bargaining with the Company.

In view of the fact that the railroad workers are not employees of the Company, we need not consider further the contentions of the Trainmen and Firemen.

The remaining problems with respect to the appropriate unit concern the clerical workers. The I. E. U. local desires the inclusion within the unit of all clerical workers, urging that approximately 33 nonmanual employees working in and about the plant and approximately 85 main-office clerical employees should all properly be joined with the generality of employees. The I. W. A. strongly urges the exclusion of the main-office clerical employees; its position with respect to factory clerical employees is somewhat equivocal.

It is feared by the I. W. A. that the interests of the clerical workers in the main office are too closely allied with those of the management. Their training, functions, and qualifications set them apart from the manual workers. Moreover, it was brought out at the hearing that it is the established custom of other locals of the I. W. A. which have agreements with lumber companies in the Northwest to exclude office clerical employees from the terms of the contracts. It also appeared that the sawmill men and the lumbermen are much concerned with safety conditions, hospitalization, and other matters attendant upon their hazardous work as well as with the more universal subjects of collective bargaining. Such matters rarely concern clerical employees of any sort.

Opposed to these considerations, the I. E. U. local urges that a unit including all clerical workers has functioned successfully for the I. E. U. local, and that the interests of both clerical and manual employees in the continued success of the Company's operations are identical.

It has been the usual practice of the Board to separate clerical employees from production employees in the determination of bargaining units. No sufficient showing has been made here to convince us of the wisdom of making an exception in this case.

<sup>16</sup> Other men are employed by Wills in activities connected with the railroad other than the operation of trains. It is sufficient to say that those men are in some cases more remote and in others far more remote from the employment of the Company than those engaged in the operation of trains.

As for the clerical employees working in and about the plant outside the main office, the I. W. A. assumes a somewhat neutral attitude. On the record as presented, we find the case for distinguishing between office and plant clerical employees not sufficiently made out. We will therefore hold that all clerical employees be excluded from the appropriate unit.<sup>17</sup>

We find, therefore, that production and maintenance workers employed by the Company in the operations at or contributory to its lumber mill at Westwood, California, including those engaged in the logging camps, and excluding all clerical employees, foremen, superintendents, executives, and other supervisory employees, and excluding also all employees working for contractors under contract with the Company, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to employees of the Company the full benefit of their right to self-organization and to collective bargaining and otherwise effectuate the policies of the Act.

#### VI. THE DETERMINATION OF REPRESENTATIVES

As we have already set forth in Section III above, the membership of the I. E. U. local apparently comprehends a majority of the employees of the respondent. Nevertheless, there are a number of reasons why we will not certify the I. E. U. local without an election as the exclusive representative of such employees for the purposes of collective bargaining.

In the first place, it is important to consider whether membership in the I. E. U. local is intended by the generality of employees to indicate a selection of a representative of their own choosing. The evidence in the record with respect to the domination and support of the 4 L's and the I. E. U. local by the Company is relevant, therefore, in resolving the question whether in joining and retaining membership in either organization the employees were influenced by real or fancied Company interference.

The evidence of company domination and support of the 4 L's is clearly brought out in the record. The 4 L's, a corporation later reorganized as the I. E. U., Inc., was formed during the World War. Locals affiliated with it are scattered throughout the Northwest. It entered the Westwood plant of the Company in July 1933. The Company and nearly all of its employees became members of the 4 L's, and industrial relations were thereafter carried on through its machinery. The organization purported to speak for the employer and for all employees including, apparently, office personnel, foremen, supervisors, administrative officers, and executives. Con-

<sup>17</sup> Cf. *Matter of R O A Manufacturing Company, Inc and United Electrical and Radio Workers of America*, 2 N. L. R. B. 159

contributions for support were made by employer and employee alike. It was testified that because of the decisions of the Supreme Court of the United States on April 12, 1937, upholding the constitutionality of the Act, the 4 L's was reorganized in May 1937 to conform with the law. The Company resigned from membership shortly prior to the reorganization. The I. E. U., Inc., is the same corporation or legal entity which formerly went under the name of the 4 L's. The I. E. U. local took the place of the local affiliate of the 4 L's. The employee membership of the 4 L's was substantially transferred to the I. E. U. local without the formality of new membership applications. The "check-off" by which the dues of the 4 L's had been collected by the Company was continued in favor of the I. E. U. local upon the receipt of cards similar to 4 L's cards and entitled "Order and Notice to Employer",<sup>18</sup> authorizing the Company to deduct the I. E. U. local dues from their wages. Those becoming members of the I. E. U. local without having been members of the 4 L's were required to sign an application as well as an "Order and Notice". On May 13, 1937, the eve of the 4 L's reorganization, the Company entered into a "Temporary Working Agreement" with the 4 L's<sup>19</sup> designed to be effective until a more complete working agreement should be negotiated between the Company and the successor to the 4 L's. This Agreement embodied recognition of the 4 L's as the exclusive bargaining agency for the "Company's employees in Westwood" whether under that name or under a new name to be adopted. Thereafter and within a short period of time the 4 L's local was succeeded by the I. E. U. local and negotiations were promptly begun with the latter organization as the exclusive bargaining agency looking toward a permanent and more detailed trade agreement. Such an agreement<sup>20</sup> had been tentatively fixed upon, published, and was being circulated among the employees of the Company at the time of the hearing, and, although the evidence discloses that it had not been executed, all but a few of its provisions were already agreed upon between the Company and the I. E. U. local. This agreement also specifies that the Company recognizes the I. E. U. local "as the sole collective bargaining agency for Company's employees at its Westwood operation subject to Federal and State laws and regulations." Because therefore, of the employer participation in the 4 L's, of the continuity and amicability of relations and close cooperation between the Company and the 4 L's and its successor, in contrast to the adverse attitude evidenced toward the advances made by the United, the widespread reluctance openly to disavow the I. E. U. local on the

<sup>18</sup> Board Exhibit No. 16; I. E. U.'s Exhibit No. 3.

<sup>19</sup> Board Exhibit No. 15.

<sup>20</sup> I. E. U.'s Exhibit No. 2.

part of employees who are members of the I. W. A. and on the part of others who have promised to vote for the I. W. A. seems reasonable and understandable. The fear of disclaiming membership in the I. E. U. local is coupled in the minds of employees with the fear of certain detection by reason of the fact that any individual withdrawal from the I. E. U. local is brought to the attention of the Company before the next pay day by the omission of the name of the withdrawer from the "check-off" lists submitted to the Company by the I. E. U. local.

In view of the fact that no membership lists were submitted by the I. E. U. local; that its counsel stated at one point during the hearing that no request for a certification without election was being made on behalf of the I. E. U. local; that an undetermined number of the I. E. U. local's members are also members of the I. W. A.; that the membership and majority estimates were made on the basis of a body of workers considerably more extensive than the unit here held appropriate; that the informal election conducted on May 12, 1937, resulted in a plurality for the I. W. A.; and that, as shown by substantial evidence supporting the I. W. A. contention, the I. E. U. local may have inherited from the 4 L's and may retain, by force of timorous inertia, a large proportion of unwilling members who were prevailed upon to join the 4 L's by company interference, domination, and support—we find that an election by secret ballot is necessary to determine the proper representatives for collective bargaining and thus to resolve the question concerning representation. Those eligible to vote shall be employees, within the appropriate unit, who were employed by the Company during the pay-roll period next preceding the date of the Direction of Election in this case.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board makes the following:

#### CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of Red River Lumber Company, Westwood, California, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The production and maintenance workers employed by the Company in operations at or contributory to its lumber mill at Westwood, California, including those engaged in the logging camps, and excluding clerical employees and foremen, superintendents, executives, and other supervisory employees, and excluding also all employees working for contractors under contract with the Company, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

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

DIRECTED that, as part of the investigation authorized by the Board to ascertain representatives for the purpose of collective bargaining with Red River Lumber Company, Westwood, California, an election by secret ballot shall be conducted within twenty (20) days from the date of this Direction, under the direction and supervision of the Regional Director for the Twentieth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Section 9, of said Rules and Regulations, among production and maintenance workers employed by said Company in operations at or contributory to its lumber mill at Westwood, California, who were employed by the Company during the pay-roll period next preceding the date of this Direction, including those engaged in the logging camps, and excluding clerical employees and foremen, superintendents, executives, and other supervisory employees, and excluding also all employees working for contractors under contract with said Company, to determine whether they desire to be represented, for the purposes of collective bargaining, by Lumber and Sawmill Workers Union Local No. 53 of International Woodworkers of America, affiliated with the Committee for Industrial Organization, or by Industrial Employees Union, Local No. 1, District 14, affiliated with Industrial Employees Union, Inc., or by neither.