

In the Matter of CHARLES R. McCORMICK LUMBER Co. and INTERNATIONAL WOODWORKERS OF AMERICA, LOCAL 112

Case No. R-645.—Decided May 5, 1938

Lumber Industry—Investigation of Representatives: controversy concerning representation of employees: employer's refusal to grant recognition of union; rival organizations—*Unit Appropriate for Collective Bargaining:* employees of the Company at Port Gamble, excluding certain categories; no controversy as to, except as to certain employees who exercise supervisory powers; stipulation as to—*Election Ordered:* pay roll furnished for purpose of—*Certification of Representatives.*

Mr. Thomas P. Graham, for the Board.

Poe, Falknor, Emory & Howe, by Mr. A. J. Falknor, and Mr. William Y. Powell, of Seattle, Wash., for the Company.

Mr. Paul Coughlin, of Seattle, Wash., for Local 112.

Mr. L. Presley, of Seattle, Wash., for Local 2536.

Miss Margaret M. Farmer, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On December 23, 1937, International Woodworkers of America, Local 112, herein called Local 112, filed with the Regional Director for the Nineteenth Region (Seattle, Washington) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of Charles R. McCormick Lumber Company, Port Gamble, Washington, 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 February 26, 1938, 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 February 28, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon

Local 112, and upon Brotherhood of Carpenters and Joiners, Local 2536, herein called Local 2536, a labor organization claiming to represent employees directly affected by the investigation. Pursuant to the notice, a hearing was held on March 18 and 19, 1938, at Port Orchard, Washington, before Thomas S. Wilson, the Trial Examiner duly designated by the Board. The Board, the Company, Local 112, and Local 2536 were represented by counsel 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. During the course of the hearing the Trial Examiner made several rulings on motions and on objections to the exclusion 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.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Charles R. McCormick Lumber Company, a Delaware corporation, has its principal office in San Francisco, California. It owns large tracts of timber in the States of Oregon and Washington and is engaged in the logging and manufacture of lumber at St. Helens, Oregon, and at Port Gamble, Washington. The Company owns, at Port Gamble, all the land, all but a few of the dwellings, and controls or leases, in addition to a sawmill, a store, a public hotel, a working man's hotel, and a garage. The Company also operates a creosoting plant at St. Helens, Oregon. A wholly owned subsidiary corporation, the McCormick Steamship Company, incorporated under the laws of California, transports both freight and passengers in intercoastal trade between the ports of the United States, Honolulu, Puerto Rico, the Gulf of Mexico, and the Panama Canal Zone.

The present proceedings are confined to the Port Gamble operations of the Company. During 1937, the sales of the Company from its Port Gamble plant amounted to \$1,800,000. Ninety-three per cent of the finished products thus sold were shipped outside the State of Washington.

The Company employed at its sawmill in Port Gamble approximately 500 workers, exclusive of office force.

II. THE ORGANIZATIONS INVOLVED

International Woodworkers of America, Local 112, is a labor organization, affiliated with the Committee for Industrial Organization, apparently admitting to its membership all production and

maintenance employees of the Company working at its sawmill in Port Gamble, excluding office, clerical, and supervisory employees.

Sawmill and Timber Workers, Local 2536, is a labor organization affiliated with the Brotherhood of Carpenters and Joiners, in turn affiliated with the American Federation of Labor. It apparently admits to membership all production and maintenance employees of the Company working at its sawmill in Port Gamble, excluding office, clerical, and supervisory employees.

III. THE QUESTION CONCERNING REPRESENTATION

Local 2536 was organized as a federal union and was chartered by the American Federation of Labor on August 29, 1934. On April 1, 1935, it became a member of the United Brotherhood of Carpenters and Joiners, an American Federation of Labor affiliate. From May 1935 until March 1938 Local 2536 was recognized by the Company as the sole collective bargaining agency at Port Gamble. During this period agreements were negotiated with the Company covering wages, hours, and other conditions of employment. The third and last of these agreements expired March 1, 1938.

A movement among the employees toward affiliation with the Committee for Industrial Organization gained momentum during the summer of 1937. By September 12, 1937, it had grown to such an extent that a meeting was called by Local 2536 at which the question of a change of affiliation from the American Federation of Labor to the Committee for Industrial Organization was put to a vote. The count showed 197 votes for the C. I. O. and 188 votes for the A. F. of L. One hundred fifty-four members did not vote. The evidence discloses a difference of opinion as to whether the motion voted upon was one to change the affiliation of Local 2536 as a group, or whether it was merely one to record the individual preferences of its members. Whatever the exact motion, it is conceded that Local 2536 did not at any time lose its identity. It increased its activity and immediately launched an intensive campaign to regain the support of both hostile and neutral members. It now claims to represent a majority of the sawmill employees.

The dissenting group, the present petitioner, became affiliated with the Committee for Industrial Organization in September 1937, and was chartered as Local 112, International Woodworkers of America, at that time. Local 112 has requested the Company to recognize it "as the sole collective bargaining agent in the sawmill." The Company has refused to deal with this group; prior to March 1, 1938, on the ground that it had a binding agreement with Local 2536, and since then on the ground that Local 112 had not been certi-

fied by the Board as bargaining representative of the employees within said group.

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

The Company, Local 112, and Local 2536 agreed by stipulation at the hearing that an appropriate unit for collective bargaining should include all the employees of the Company employed at Port Gamble, excluding longshoremen, dockboat workers, office, store, hotel, and garage employees, and excluding also the following supervisory employees: Mr. Luedemann, manager of the Northwest section, Williams Hammerschmith, Leonard Clark, Nels Johnson, C. H. Carlson, H. S. McPherson, William Anderson, Roy Amos, Walter Finn, Sr., W. K. McNeil, J. Clifford Murdock, Thomas Forsyth, and Oscar Johnson.

Local 112 also contends that foremen, strawbosses, and leadermen who at times exercise supervisory powers over fellow workmen should be excluded from the bargaining unit. Local 2536 maintains that these employees do manual labor side by side with the other workmen and that the supervisory powers accorded them are too slight to justify their exclusion on that ground.

It appears from the record that it is the duty of these men to see that the gangs of which they are members are fully manned and that the material or machines upon which they are working are properly handled. Although they rarely have independent power to hire and fire, they often have the power to recommend dismissals. They may supervise as few as 3 or as many as 40 men. We are of the opinion that foremen, strawbosses, and leadermen, who exercise supervisory powers, should be classed with the supervisory employees and as such should be excluded from the bargaining unit.

Local 112 also requests that William Miller, the town-site boss, be excluded as a supervisory employee. It appears from the record that Miller's duties consist of keeping the town dwellings in repair

and occasionally doing light construction work. There is no showing that he is at any time actually employed in the sawmill or that his work is necessarily connected with it. Under the circumstances, we conclude that no sufficient showing has been made to relate his interests to those of the employees within the unit. We shall therefore exclude Miller from the bargaining unit.

We find that the employees of the Company employed at Port Gamble, excluding longshoremen, dockboat workers, the town-site boss, store, hotel, and garage employees and also excluding office and supervisory employees, constitute a unit appropriate for the purpose 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

There was introduced in evidence at the hearing the Company's pay roll of February 28, 1938, showing the names of approximately 469 employees within the unit which we have found appropriate.

Local 112 introduced in evidence approximately 238 application cards, a list containing approximately 238 names of employees within the desired unit, a list containing the names of 16 persons whom Local 112 declares desire representation by it, and a list of employees whom it claims to be supervisory employees.

Local 2536 introduced in evidence approximately 257 application cards, a petition, circulated among the employees about February 20, 1938, containing 262 names, membership lists containing approximately 257 names of employees within the desired unit, a list of persons whom Local 2536 claimed had rejoined their union, and several dues books.

Upon examination of the various documents introduced in evidence, by the two unions, we find many duplications in their respective claims. In view of this, we find that the question which has arisen concerning the representation of employees can best be resolved by means of an election by secret ballot. It was agreed by the parties that if an election is ordered by the Board, the pay-roll date of February 28, 1938, shall be used to determine eligibility to vote.

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 Charles R. McCormick Lumber Company,

at Port Gamble, Washington, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The employees of the Company, employed at Port Gamble, excluding longshoremen, dockboat workers, the town-site boss, store, hotel and garage employees, and also excluding office and supervisory employees, 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 purposes of collective bargaining with Charles R. McCormick Lumber Company, 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 Nineteenth 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 the employees of the Company who were employed at Port Gamble during the payroll period ending February 28, 1938, exclusive of longshoremen, dockboat workers, the town-site boss, store, hotel and garage employees, office and supervisory employees, and those employees who have quit or been discharged for cause since February 28, 1938, to determine whether they desire to be represented by International Woodworkers of America, or by the United Brotherhood of Carpenters and Joiners, for purposes of collective bargaining, or by neither.

[SAME TITLE]

CERTIFICATION OF REPRESENTATIVES

June 2, 1938

On May 5, 1938, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Election in the

above-entitled case. The Direction of Election directed that an election by secret ballot be held within twenty (20) days from the date of the Direction, among the employees of the Charles R. McCormick Lumber Company, Port Gamble, Washington, who were employed during the pay-roll period ending February 28, 1938, exclusive of longshoremen, dockboat workers, the town-site boss, store, hotel and garage employees, office and supervisory employees, and those employees who had quit or been discharged for cause since February 28, 1938, to determine whether they desired to be represented by the International Woodworkers of America, Local 112, or by Lumber and Sawmill Workers Local Union No. 2536, for the purposes of collective bargaining, or by neither.

Pursuant to the Decision and Direction of Election, an election by secret ballot has been conducted under the direction and supervision of the Acting Regional Director for the Nineteenth Region (Seattle, Washington) among the eligible employees of the Charles R. McCormick Lumber Company. Full opportunity was accorded all parties to this investigation to participate in the conduct of the secret ballot and to make challenges. On May 18, 1938, the said Regional Director, acting pursuant to Article III, Section 9, of the Board's Rules and Regulations—Series 1, as amended, issued and duly served upon the parties an Intermediate Report on the election. No objections or exceptions to the Intermediate Report have been filed by any of the parties.

As to the balloting and its results, the Acting Regional Director reported as follows:

Total number eligible to vote.....	447
Total number of ballots cast.....	443
Total number of blank ballots.....	0
Total number of void ballots.....	0
Total number of ballots cast for International Woodworkers of America, Local 112, affiliated with the C. I. O.....	207
Total number of ballots cast for Lumber and Sawmill Workers, Local Union No. 2536, affiliated with the A. F. of L.....	235
Total number of ballots cast for neither organization.....	0
Total number of challenged votes.....	1

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, Sections 8 and 9, of National

Labor Relations Board Rules and Regulations—Series 1, as amended,

IT IS HEREBY CERTIFIED that the Lumber and Sawmill Workers, Local Union No. 2536, affiliated with the A. F. of L., is the exclusive representative of all such employees for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.