

In the Matter of PACIFIC LUMBER INSPECTION BUREAU, INC. and  
NORTHWEST LUMBER INSPECTORS' UNION, LOCAL NO. 20,877

*Case No. R-699.—Decided May 28, 1938*

*Lumber Inspection Industry—Investigation of Representatives:* controversy concerning representation of employees: employer's refusal to grant recognition of union; rival organizations—*Unit Appropriate for Collective Bargaining:* lumber inspectors employed by the Company in Oregon and Washington; no controversy as to—*Agreement:* collective, no bar to determination of representatives—*Election Ordered*

*Mr. Daniel Baker* and *Mr. William A. Babcock, Jr.*, for the Board.  
*Mr. W. H. Abel*, of Montesano, Wash., for the Company.  
*Mr. L. Presley Gill*, of Seattle, Wash., for the Union.  
*Mr. Roy Chenoweth*, of Longview, Wash., for the Association.  
*Mr. Willard Y. Morris*, of counsel to the Board.

DECISION  
AND  
DIRECTION OF ELECTION

STATEMENT OF THE CASE

On February 23, 1938, Northwest Lumber Inspectors' Union, Local No. 20,877, herein called the Union, 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 Pacific Lumber Inspection Bureau, Inc., Seattle, 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 March 23, 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 March 31, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company, upon the

Union, and upon Northwest Lumber Inspectors' Association, herein called the Association, a labor organization claiming to represent employees directly affected by the investigation. Pursuant to the notice a hearing was held on April 11, 1938, at Seattle, Washington, before James M. Brown, the Trial Examiner duly designated by the Board. The Board, the Company, and the Union were represented by counsel; the Association was represented by its president; and all participated in the hearing. Full opportunity to be heard, to examine and 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 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.

After the hearing the Company filed a brief which has been duly considered by the Board.

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

#### FINDINGS OF FACT

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

Pacific Lumber Inspection Bureau is a non-profit membership corporation organized under the laws of the State of Washington and is engaged in the business of inspecting timber products for its member companies and other lumber concerns. The membership of the Company consists of 171 lumber manufacturers operating in the States of Oregon and Washington and in British Columbia. The Company is engaged primarily in certifying that grades of lumber prepared for shipment conform to the orders placed with the respective mills filling the orders and that the mills have complied with the requirements of the orders. The bulk of its work is performed on waterborne shipments of timber products, which are destined to foreign countries or to States other than that in which the mill filling the order is situated. In 1936 the Company inspected 2,408,000,000 feet of lumber. Of this amount 2,332,000,000 feet were shipped by water and 76,000,000 feet were shipped by rail to the Middle West and to points east. The work performed by the Company has come to be so uniformly accepted by both buyers and shippers of lumber that a certificate of inspection furnished by the Company is now considered an essential document in the export trade in connection with all shipments of timber products made by mills situated in the territory in which the Company operates.

The Company stipulated that:

The business of the Bureau is interstate in character and has a close, intimate, and substantial relationship to trade, traffic, and commerce among the several states and with foreign countries.

## II. THE ORGANIZATIONS INVOLVED

Northwest Lumber Inspectors' Union, Local No. 20,877, is a labor organization affiliated with the American Federation of Labor, admitting to its membership all lumber inspectors of the Company, excluding clerical and supervisory employees.

Northwest Lumber Inspectors' Association is an unaffiliated labor organization, admitting to its membership all lumber inspectors of the Company, excluding clerical and supervisory employees.

## III. THE QUESTION CONCERNING REPRESENTATION

On April 4, 1937, at a meeting of the delegates of the Association, which had been in existence among the Company's employees since 1934, it was decided by vote to apply to the American Federation of Labor for a charter. On May 7, 1937, the Association and the Company executed a written contract whereby the Company agreed to recognize the Association as the sole bargaining agency for all the Company's inspectors. Before signing this contract, however, the president of the Association informed the Company's representatives of the Association's intention to affiliate with a national organization. Upon assurance by the Company's representatives that such affiliation would not constitute a breach of the contract and that the contract contained adequate provisions for dealing with such a situation, the president of the Association signed the contract.

On July 11, 1937, an American Federation of Labor charter was installed by 10 inspectors who had been members of the Association. At a meeting held on July 18, 1937, a majority of the delegates of the Association voted to accept the charter. Motions were made and carried to transfer all the Association's assets to the Union and to dissolve the Association as of July 31, 1937.

A number of the members of the Association insisted that there should have been a referendum of the members of the Association before the American Federation of Labor charter was accepted. As a consequence they refused to consider themselves members of the Union and continued as a separate organization, retaining the name of the Association on the theory that the Association was never properly dissolved. The resolution of this contention is immaterial to this proceeding. It is sufficient that two rival labor organizations have evolved, each claiming to represent the Company's inspectors.

The contract of May 7, 1937, was by its terms to remain in effect for 1 year. A clause in the contract further provided that:

When either party desires to terminate the agreement, written notice by registered mail, at least sixty days in advance, shall be given to the party of the other part; otherwise, if notice is not given, . . . the agreement will automatically continue in effect for the succeeding twelve months.

In August 1937 the Union requested the Company to grant it recognition as the successor to the contract of May 7, 1937. It was not until February 18, 1938, however, that a meeting of representatives of the Company and of the Union took place. Upon the Union's request for recognition the Company refused to deal with it, stating that a group of inspectors still claimed to constitute the Association, which the Company was required to recognize by the terms of the contract.

The Union filed its petition with the Regional Director on February 23, 1938, more than 60 days before the expiration date of the contract. At the hearing the president of the board of trustees of the Company testified that the Company desired to have the question of representation determined and that it would abide by the Board's determination. Under these circumstances the contract presents no barrier to a determination by the Board of the representatives of the Company's inspectors for the purposes of collective bargaining.

We find that a question has arisen concerning the 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 thereof.

#### V. THE APPROPRIATE UNIT

At the hearing the Company, the Union, and the Association agreed that the unit should be confined to lumber inspectors employed by the Company in the States of Washington and Oregon, excluding clerical and supervisory employees.

We find that the lumber inspectors of the Company in the States of Oregon and Washington, excluding clerical and supervisory employees, 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 collective bargaining and otherwise effectuate the policies of the Act.

#### VI. THE DETERMINATION OF REPRESENTATIVES

There is a dispute between the Union and the Company as to the number of inspectors in the Company's employ during February 1938, the month in which the Union filed the petition herein. The Union contends that the Company's pay roll for February 1938, should be determinative of the number of inspectors in the Company's employ during that month. The pay roll, which was introduced in evidence, showed that 258 inspectors worked during that month.

The Company contends that the number of inspectors in its employ is considerably greater and that the February 1938 pay roll is not the proper basis on which to determine the number of its inspectors. The Company showed that the number of inspectors varies from month to month, depending upon the season and conditions in the lumber industry. According to testimony in behalf of the Company, it considers all inspectors engaged by it as employees until they resign or are discharged. It does not cease to regard an inspector as an employee solely because he is not on the pay roll for a particular month or longer period. Accordingly, it introduced in evidence a list prepared by it in September 1937 from its Social Security records. This list contained 375 names which, it was testified, represented the total number of its employees at the time the list was prepared. It was shown that of this number 15 are no longer employees, because of death, permanent disability, discharge, or resignation. The Company has not since that time hired any inspectors whose names do not appear on the list. Deducting the 15 names which no longer represent employees, there remain 360 inspectors whom the Company regarded as its employees at all times since September 1937 up to the time of the hearing in April 1938. It was shown that the difference between this number and the number of persons appearing on its February 1938 pay roll was due to the fact that a number of the lumber mills for which it performs work were shut down.

Under these circumstances we are disposed to accept the Company's contention that there were at least 360 inspectors in its employ during February 1938 and at all times thereafter up to the time of the hearing.

The Union introduced in evidence a copy of its ledger showing a membership of 180 employees. The Association introduced several lists showing a membership of 145 inspectors. Of the latter number, 15 names also appear on the Union's list. Discounting these 15

names as doubtful, there remain 165 undisputed names on the Union's list. The Union also introduced a second list of 13 additional names of inspectors who, though members of the International Woodworkers of America, indicated their support of the Union in the present controversy. Even if these 13 names are added to the Union's 165 undisputed names, its membership showing is 178, less than a majority of the employees in the appropriate unit.

We find that the question concerning representation of employees of the Company can best be resolved by the holding of an election by secret ballot. Eligibility to vote will be determined by the September 1937 list of 375 employees introduced by the Company, less the 15 employees who were shown to have ceased to be employees by April 1938, and those who have since quit or have been discharged for cause.

#### VII. THE CONDUCT OF THE ELECTION

Since the employees of the Company operate in various places throughout the States of Washington and Oregon, problems concerning the method of conducting the election may arise. The record affords little aid in determining whether the election can be conducted conveniently in specifically designated places. We will, therefore, direct that the election be held under the direction and supervision of the Regional Director for the Nineteenth Region, who shall determine in his discretion the exact times, places, and the procedure for giving notice of the election and for balloting. We expressly authorize the use of the United States mail for such purposes and the use of agents, if feasible, to conduct elections at appropriate places.

#### CONCLUSIONS OF LAW

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

1. A question affecting commerce has arisen concerning the representation of employees of Pacific Lumber Inspection Bureau, Inc., Seattle, Washington, within the meaning of Section 9 (c) and Section 2 (6) and (7), of the National Labor Relations Act.
2. The lumber inspectors of Pacific Lumber Inspection Bureau, Inc., in the States of Oregon and Washington, exclusive of clerical 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 hereby

DIRECTED that, as a part of the investigation authorized by the Board to ascertain representatives for the purposes of collective bargaining with Pacific Lumber Inspection Bureau, Inc., Seattle, Washington, an election by secret ballot shall be conducted within forty-five (45) 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 lumber inspectors of Pacific Lumber Inspection Bureau, Inc., in the States of Oregon and Washington, whose names appear on the list of 375 employees introduced by the Company, less the 15 inspectors who had ceased to be employees by April 1938 and those who have since quit or have been discharged for cause, to determine whether they desire to be represented by Northwest Lumber Inspectors' Union, Local No. 20,877, affiliated with the American Federation of Labor, or by Northwest Lumber Inspectors' Association, for the purposes of collective bargaining, or by neither.

[SAME TITLE]

## AMENDMENT TO DIRECTION OF ELECTION

*June 30, 1938*

On May 28, 1938, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Election in the above-entitled proceeding, the election to be held within forty-five (45) days from the date of the Direction, under the supervision of the Regional Director for the Nineteenth Region (Seattle, Washington), to determine whether the lumber inspectors of Pacific Lumber Inspection Bureau, Inc., Seattle, Washington, desire to be represented by Northwest Lumber Inspectors' Union, Local No. 20,877, affiliated with the American Federation of Labor, herein called the Union, or by Northwest Lumber Inspectors' Association, herein called the Association, for the purposes of collective bargaining, or by neither.

On June 23, 1938, the Union duly filed with the Regional Director charges that the Pacific Lumber Inspection Bureau, Inc., has

dominated and interfered with the formation and administration of the Association, within the meaning of Section 8 (2) of the National Labor Relations Act, 49 Stat. 449. We shall postpone the election indefinitely pending the investigation and determination of the aforesaid charge.

The Board hereby amends its Direction of Election by striking out the words "within forty-five (45) days from the date of this Direction" and substituting therefor the words "at such time as the Board may in the future direct."