

In the Matter of MEADOW VALLEY LUMBER COMPANY, A CORPORATION  
and LUMBER AND SAWMILL WORKERS' LOCAL UNION 53 OF INTER-  
NATIONAL WOODWORKERS OF AMERICA

*Case No. C-531.—Decided June 6, 1938*

*Lumber Industry—Settlement:* agreement to reinstate employees, give back pay, and otherwise comply with Act—*Order:* entered on stipulation.

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

*Breed, Burpee & Robinson*, by *Mr. Harold C. Holmes, Jr.*, of Oakland, Calif., and *Mr. Stanley C. Young*, of Quincy, Calif., for the respondent.

*Mr. Richard Meigs*, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges and amended charges duly filed by Lumber and Sawmill Workers' Local Union 53 of International Woodworkers of America, herein called the Union, the National Labor Relations Board, herein called the Board, by Alice M. Rosseter, Regional Director for the Twentieth Region (San Francisco, California), issued its complaint, dated October 5, 1937, against Meadow Valley Lumber Company, a California corporation, Gray's Flat, Plumas County, California, herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices within the meaning of Section 8 (1), (2), and (3) and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act. Copies of the complaint, accompanied by notice of hearing, were duly served upon the respondent, upon the Union, and upon the Brotherhood of Independent Woodworkers, herein called the B. I. W., a labor organization alleged in the complaint to be dominated by the respondent.

On October 18, 1937, the respondent filed an answer (1) praying for a dismissal of the complaint on two separate grounds, (2) denying the alleged unfair practices, and (3) setting forth certain affirmative matters.

Pursuant to the notice, a hearing was held at Quincy, California, from October 18 to October 21, 1937, before P. H. McNally, the Trial Examiner duly designated by the Board. The Board and the respondent were represented by counsel and participated in the hearing. Although the B. I. W. was served with a copy of the complaint and notice of hearing, it did not intervene in the proceeding. Its president, Carlton Pepper, and several other of its officers appeared as witnesses for the Board and the respondent. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties.

At the commencement of the hearing, the respondent made two separate motions to dismiss the complaint on the grounds that the respondent was not engaged in interstate commerce and that the complaint failed to state an unfair labor practice. The respondent also moved to strike from the complaint all reference to the discharge of Edwin G. Gilbert on the ground that the issue between the respondent and Gilbert is *res adjudicata*; having been determined by a judgment of the Superior Court of the State of California in and for the County of Plumas. The Trial Examiner denied each of the motions. These rulings are hereby affirmed. At the close of the Board's case and also at the close of the hearing the respondent made a motion to dismiss the complaint as a whole and numerous motions to dismiss particular parts of the complaint. The Trial Examiner denied a number of these motions, including the motion to dismiss the entire complaint. These rulings are hereby affirmed. On other motions he reserved rulings until the issuance of his Intermediate Report. A large number of other motions and objections to the admission of evidence were made during the course of the hearing, both by counsel for the respondent and by counsel for the Board. The Trial Examiner ruled on a number of these motions and objections at the hearing and reserved decision on the remainder for disposition in his Intermediate Report. The Trial Examiner's rulings at the hearing are hereby affirmed. Subsequent to the hearing, counsel for the Board, by a letter dated November 11, 1937, filed with the Trial Examiner a motion to amend the complaint to conform to the evidence, copies of which were duly served upon the respondent and upon the B. I. W. By a letter dated November 13, 1937, addressed to the Trial Examiner, the respondent objected to the motion, except as to a particular portion thereof. On March 28, 1938, the Trial Examiner filed his Intermediate Report, (1) granting the motion of counsel for the Board to amend the complaint to conform to the evidence, (2) granting the respondent's motion to dismiss that portion of the complaint which alleged discriminatory discharges of Claude Schraeder, Ralph Yenawine, and Lloyd Blan, because of

failure of proof, (3) denying all of the respondent's other motions upon which rulings had been reserved, (4) finding that the respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8 (1), (2), and (3) and Section 2 (6) and (7) of the Act, and (5) recommending in substance that the respondent cease and desist from its unfair labor practices and, affirmatively, offer full reinstatement with back pay to three named individuals, make whole two other named individuals, and withdraw recognition from and disestablish the B. I. W. No exceptions to the Intermediate Report were filed by the respondent, although the time for doing so was extended by the Board upon the respondent's request. The Board has reviewed the rulings of the Trial Examiner on motions and on objections to the admission of evidence and finds that no prejudicial errors were committed. The rulings are hereby affirmed.

On May 9, 1938, the Board and the respondent, by their respective counsel, and the Union, by its president, entered into a stipulation subject to the approval of the Board, setting forth the nature of the respondent's business and authorizing the Board to issue an order against the respondent in accordance with the terms of the stipulation. The Board hereby approves the stipulation.

Upon the basis of the above-mentioned stipulation and upon the entire record in the case, the Board makes the following:

#### FINDINGS OF FACT

##### I. THE BUSINESS OF THE RESPONDENT

The respondent is a California corporation with a principal office for corporate purposes in Oakland, California. The respondent is engaged chiefly in the manufacture of timber products. It carries on logging and sawmill operations at Spanish Ranch, Plumas County, California, from which place the lumber is transported by aerial tramway to the drying yards, planing mill, and box factory at Gray's Flat, a distance of  $5\frac{1}{2}$  miles.

In 1936 the respondent sold 13,735,452 feet of lumber, amounting in value to \$320,022.34. Approximately 41 per cent of this sum represented sales made outside the State of California. For the period extending from January to August 1937, the respondent sold 10,137,534 feet of lumber amounting in value to \$233,999.38. Approximately 15 per cent of this sum represented sales made outside the State. Approximately 11 per cent of the value of the total sales designated by the respondent as having been made within the State of California are made to the White Pine Lumber Distributors Corp., a Nevada corporation doing business in Reno, Nevada. As to these

sales, title passes to the Nevada corporation at the respondent's mill, and subsequently the lumber thus sold is transported to that corporation in Reno, Nevada.

The method by which the respondent solicits business consists of mailing price lists to various lumber buyers, some of whom are in business in States other than California.

The business of the respondent is seasonal, and therefore, the number of employees varies from time to time. At the height of the season the respondent employs approximately 40 persons at Spanish Ranch and 70 persons at Gray's Flat.

## II. THE BASIS OF THE SETTLEMENT

The stipulation between the Board, the respondent, and the Union provides as follows:

It is hereby stipulated and agreed by and between the parties to the above-entitled proceeding as follows:

That the National Labor Relations Board may enter an order against the respondent, Meadow Valley Lumber Company, on the following terms, to wit:

1. That the respondent Meadow Valley Lumber Company and its officers, agents, successors, and assigns shall cease and desist:

(a) From interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities for the purpose of collective bargaining or other mutual aid and protection;

(b) From discouraging membership in Lumber and Sawmill Workers' Local Union No. 53 of the International Woodworkers of America (formerly known as United Workers, Local Industrial Union No. 38), or any other labor organization, by discrimination in regard to hire and tenure of employment, or any term or condition of employment;

(c) From dominating or interfering with the administration of Brotherhood of Independent Woodworkers, or any other labor organization;

(d) From contributing financial or other support to the Brotherhood of Independent Woodworkers, or any other labor organization.

2. That the respondent take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer employment, in their former respective positions, without prejudice to their seniority and other rights and privileges, to Edwin G. Gilbert, W. G. Gilbert, and R. C. McCarthy.

who have not had substantially equivalent employment elsewhere, replacing, if necessary, persons of less seniority, hired by respondent on or about July 19, 1937, or subsequent thereto;

(b) Make whole Edwin G. Gilbert, W. G. Gilbert, and R. C. McCarthy for any losses of pay they have suffered by reason of the respondent's discriminatory acts, by payment to each of them of a sum of money equal to that which he would normally have earned as wages from the date of his discharge to the date of the respondent's offer of reinstatement, less any amounts earned by him during that period, which sums shall be as follows: To R. C. McCarthy, the sum of \$150.00, and to Edwin G. Gilbert and W. G. Gilbert, jointly, the sum of \$682.80 cash at present, and the sum of \$1,000.00 on October 15, 1938;

(c) Make whole J. M. Leahy for any losses of pay he has suffered by reason of the respondent's discriminatory acts, by payment to him of a sum of money equal to that which he would normally have earned as wages from the date of his discharge to August 6, 1937, the date he had substantially equivalent employment at Loyalton, California, less any amounts earned by him during that period, which amount is found to be the sum of \$67.20;

(d) Make whole C. W. Hayden for any losses of pay he has suffered by reason of the respondent's discriminatory acts, by payment to him of a sum of money equal to that which he would normally have earned as wages from the date of his discharge to October 18, 1937, the date he had substantially equivalent employment with the Renz Construction Company, less any amounts earned by him during that period, which is found to be the sum of \$100.00;

(e) Withdraw all recognition from Brotherhood of Independent Woodworkers as a representative of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, disestablish all relations with it, and disestablish the Brotherhood of Independent Woodworkers;

(f) Post within ten (10) days from the date of this order, on the company bulletin board in front of the "Gray's Flat" office building, a notice in writing setting forth in detail:

(1) That respondent will cease and desist in the manner aforesaid;

(2) That Brotherhood of Independent Woodworkers is disestablished as the representative of any of its employees for the purpose of dealing with it with respect to grievances, labor disputes, wages, rates of pay, hours of employment, and con-

ditions of work, and that it will refrain from any recognition thereof;

(3) That its employees are free to join Lumber and Sawmill Workers' Local Union No. 53 of International Woodworkers of America (formerly known as United Woodworkers L. I. U. No. 38), if they choose.

(g) Maintain such notices for at least thirty (30) consecutive days from the date of posting;

(h) File with the Regional Director of the Twentieth Region, 1095 Market Street, San Francisco, California, on or before ten (10) days after receipt of this order, a report in writing setting forth, in detail, the manner and form in which respondent has complied with the foregoing requirements.

3. The respondent expressly consents and agrees that an enforcement order embodying the terms of the order above stipulated to be entered by the National Labor Relations Board may be entered by the appropriate United States Circuit Court of Appeals upon petition of the Board as provided in Section 10 (e) of the National Labor Relations Act.

4. It is expressly understood and agreed that this stipulation is subject to the approval of the National Labor Relations Board.

### ORDER

Upon the basis of the above stipulation and upon the entire record in the case, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Meadow Valley Lumber Company, Gray's Flat, Plumas County, California, its officers, agents, successors, and assigns shall:

1. Cease and desist:

(a) From in any manner interfering with, restraining, or coercing its employees in the exercise of their rights to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, or to engage in concerted activities for the purpose of collective bargaining or other mutual aid or protection, as guaranteed in Section 7 of the Act;

(b) From in any manner discouraging membership in Lumber and Sawmill Workers' Local Union No. 53 (formerly known as United Woodworkers' Local Industrial Union No. 38), or any other labor organization by discrimination in regard to hire and tenure of employment, or any term or condition of employment;

(c) From dominating or interfering with the formation or administration of Brotherhood of Independent Woodworkers, or any other

labor organization of its employees, or contributing support to any such labor organizations.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Offer to Edwin G. Gilbert, W. G. Gilbert, and R. C. McCarthy immediate and full reinstatement to their former positions, without prejudice to their seniority and other rights and privileges, replacing, if necessary, persons of less seniority, hired by the respondent on or about July 19, 1937, or subsequent thereto;

(b) Make whole said Edwin G. Gilbert, W. G. Gilbert, and R. C. McCarthy for any losses of pay they have suffered by reason of the respondent's discriminatory acts, by payment to each of them, a sum of money equal to that which he would normally have earned as wages during the period from the date of his discharge to the date of the respondent's offer of reinstatement less any amounts earned by him during that period, which sums shall be as follows: To R. C. McCarthy, the sum of \$150.00, and to Edwin G. Gilbert and W. G. Gilbert, jointly, the sum of \$682.80 cash at present, and the sum of \$1,000.00 on October 15, 1938;

(c) Make whole J. M. Leahy for any losses of pay he has suffered by reason of the respondent's discriminatory acts, by payment to him of a sum of money equal to that which he would normally have earned as wages during the period from the date of his discharge to August 6, 1937, the date he obtained substantially equivalent employment at Loylton, California, less any amounts earned by him during that period, which amount is found to be the sum of \$67.20;

(d) Make whole C. W. Hayden for any losses of pay he has suffered by reason of the respondent's discriminatory acts, by payment to him of a sum of money equal to that which he would normally have earned as wages during the period from the date of his discharge to October 18, 1937, the date he obtained substantially equivalent employment with the Renz Construction Company, less any amounts earned by him during that period, which amount is found to be the sum of \$100.00;

(e) Withdraw all recognition from Brotherhood of Independent Woodworkers as representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work; and completely disestablish said Brotherhood of Independent Woodworkers as such representative;

(f) Post within ten (10) days from the date of this order a notice on the company bulletin board in front of the Gray's Flat office building and maintain such notice for a period of thirty (30) consecutive days, stating (1) that the respondent will cease and desist in the manner aforesaid, (2) that the respondent will withdraw all recogni-

tion from Brotherhood of Independent Woodworkers as the representative of any of its employees for the purpose of dealing with the respondent concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and that Brotherhood of Independent Woodworkers is disestablished as such representative, and (3) that its employees are free to join Lumber and Sawmill Workers' Local Union No. 53 of International Woodworkers of America (formerly known as United Woodworkers' Local Industrial Union No. 38), if they so chose;

(g) File with the Regional Director for the Twentieth Region, 1095 Market Street, San Francisco, California, on or before ten (10) days after receipt of this order, a report in writing setting forth, in detail, the manner or form in which the respondent has complied with the foregoing requirements.

And it is further ordered that the complaint, in so far as it alleges that the respondent discharged Ralph Yenawine, Lloyd E. Blan, and Claude Schraeder, and as it alleges that the respondent has refused to reemploy Wilbur Wixon, and said Ralph Yenawine, Lloyd E. Blan, and Claude Schraeder, be, and it is hereby, dismissed.