

In the Matter of SMITH WOOD PRODUCTS, INC. and PLYWOOD AND
VENEER WORKERS LOCAL No. 2691, INTERNATIONAL WOODWORKERS OF
AMERICA

Case No. C-404.—Decided June 16, 1938

Woodworking Industry—Interference, Restraint, and Coercion: advising employees to join a particular labor organization; assisting formation of such organization—*Discrimination:* discharge of employees under “closed shop” contract where contract is made with local union and local union has changed name and affiliation—*Reinstatement Ordered:* discharged employees, dismissing newly hired employees, if necessary; preferential list ordered: to be followed in further reinstatement—*Back Pay:* not awarded, because of doubt in which employer’s legal rights and obligations under contract had been involved; ordered, to discharged employees who are not reinstated or placed on preferential list within 5 days of application for reinstatement.

Mr. G. L. Patterson and *Mr. Patrick H. Walker*, for the Board.

Mr. J. B. Bedingfield, of Marshfield, Oreg., and *Mr. J. Arthur Berg*, of Coquille, Oreg., for the respondent.

Mr. Tom Boeke, of Coquille, Oreg., for the Carpenters’ Local.

Mr. Julius Schlezinger, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon charges duly filed by Plywood and Veneer Workers Union, Local No. 2691, of the International Woodworkers of America, herein called I. W. A. Local 2691, the National Labor Relations Board, herein called the Board, by Charles W. Hope, Regional Director for the Nineteenth Region (Seattle, Washington), issued its complaint dated January 15, 1938, against Smith Wood Products, Inc., herein called the respondent, alleging that the respondent had engaged in and was engaging in unfair labor practices affecting commerce, within the meaning of Section 8 (1) and (3), and Section 2 (6) and (7) of the National Labor Relations Act, 49 Stat. 449, herein called the Act, in that the respondent had, on several occasions during August and September 1937, advised its employees that the

respondent would discontinue the operation of its plywood plant in Coquille, Oregon, if said employees continued their membership in I. W. A. Local 2691, and in that the respondent had refused to employ since September 21, 1937, at such plywood plant, 78 named employees because of their membership in I. W. A. Local 2691 and their failure to maintain membership in Local No. 2691 of the United Brotherhood of Carpenters and Joiners of America, herein called New Carpenters' Local 2691. The complaint and accompanying notice of hearing were duly served upon the respondent, I. W. A. Local 2691, and New Carpenters' Local 2691. The respondent filed an answer to the complaint in which it denied that it had engaged in unfair labor practices.

On January 20, 1938, New Carpenters' Local 2691 filed a motion to intervene. The motion was granted.

Pursuant to notice, a hearing was held at Coquille, Oregon, on February 2 and 3, 1938,¹ before Mapes Davidson, the Trial Examiner duly designated by the Board. The Board, the respondent, and New Carpenters' Local 2691 were represented by counsel and participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to produce evidence bearing upon the issues was afforded to 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 these rulings and finds that no prejudicial errors were committed. All rulings of the Trial Examiner are hereby affirmed.

On February 15, 1938, the Board, pursuant to Article II, Section 37, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered that the proceeding be transferred to and continued before it.

On May 6, 1938, the Board, pursuant to Article II, Section 38 (d), of the Rules and Regulations, issued Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order, which were duly served upon the parties. At the same time, the Board granted to the parties the right, within 10 days from the receipt of such Proposed Findings of Fact, Proposed Conclusions of Law, and Proposed Order, to file exceptions, to request oral argument before the Board, and to request permission to file a brief with the Board. Thereafter, such exceptions were duly filed by I. W. A. Local 2691. The Board has considered these exceptions and finds them to be without merit.

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

¹The hearing was originally scheduled for January 26, 1938. Notice of postponement was duly served upon the parties.

FINDINGS OF FACT

I. THE BUSINESS OF THE RESPONDENT

Smith Wood Products, Inc., is a Missouri corporation having its principal office at Kansas City, Missouri. It operates at Coquille, Oregon, a cedar mill, a fir mill, and a plywood plant. The respondent owns approximately 300,000,000 feet of standing timber in Coos County, Oregon.

During 1937 approximately 16,000,000 feet of cedar, 37,000,000 feet of Douglas fir, and 30,000,000 feet of plywood were processed at the respondent's plants. The respondent purchased a portion of this timber in the open market and obtained the balance from its own supply in Coos County. Between 80 and 90 per cent of its finished products were sold by the respondent to customers located outside the State of Oregon. In 1937 the respondent shipped products to purchasers in 43 States and 20 foreign countries.

The only plant of the respondent involved in this proceeding is the plywood plant at Coquille, Oregon, herein called the Plywood plant.² The products of the Plywood plant are sold through the Portland, Oregon, office of Ralph L. Smith Lumber Company, a sales company, to jobbers and wholesalers throughout the United States. The largest volume is sold in California, Pennsylvania, and Illinois.

II. THE UNIONS

Local Union No. 2691 of the International Woodworkers of America is a labor organization affiliated with the Committee for Industrial Organization. Its membership is limited to employees of the Plywood plant.

Local Union No. 2691 of the United Brotherhood of Carpenters and Joiners of America is a labor organization affiliated with the American Federation of Labor. It also limits its membership to employees of the Plywood plant.

III. THE UNFAIR LABOR PRACTICES

A. *The background of the dispute*

Organization among the employees of the Plywood plant began shortly after the opening of the plant during the last week of December 1936. In January 1937, a union was formed which affiliated with the United Brotherhood of Carpenters and Joiners of America as Local No. 2691, herein called Carpenters' Local 2691. It grew rapidly and within a short time succeeded in obtaining as members practically all the workers at the plant.

² This plant was placed in operation in December 1936.

On April 1, 1937, Carpenters' Local 2691 entered into a written contract with the respondent covering hours, wages, and other conditions of employment. The contract also contained a "closed shop" provision requiring the respondent to employ only members of the Local in good standing. The contract was to run until March 1, 1938.

In July 1937, Carpenters' Local 2691 participated, together with other locals in the lumber industry of the Pacific Northwest, in a referendum on the question of seceding from the United Brotherhood of Carpenters and Joiners of America, herein called the Carpenters' Union, and affiliating with the Committee for Industrial Organization, herein called the C. I. O. The ballots were counted at a convention of the Federation of Woodworkers in Tacoma, Washington. Between 86 and 87 per cent of those cast by members of Carpenters' Local 2691 were in favor of affiliating with the C. I. O.³

Following the convention, Carpenters' Local 2691, at a regular meeting held on July 25, 1937, voted unanimously to request a charter from the International Woodworkers of America, herein called the I. W. A., an international union affiliated with the C. I. O. On August 22 it voted to install the I. W. A. charter as soon as a member of the Executive Board of the I. W. A. could be obtained to conduct the installation ceremony.

The I. W. A. charter was installed on August 29, 1937, at a special meeting of Carpenters' Local 2691, attended by between 120 and 125 of its 180 members. Just prior to its installation a motion to close the books and records of Carpenters' Local 2691 forever was adopted with but one dissenting vote. Also, a committee was elected which returned to the Carpenters' Union at its national offices in Indianapolis, Indiana, the charter of Local No. 2691. Following the installation of the new charter a motion was passed retaining as officers of I. W. A. Local 2691 all of the officers of Carpenters' Local 2691.

The Plywood plant was closed down from September 1 until September 8. During this period an attempt was made to "reorganize" Local No. 2691 of the Carpenters' Union. On September 4 a meeting, attended by about 13 or 14 employees of the Plywood plant, was held at the Coquille City Hall. At this meeting it was decided to try to obtain the charter of Local 2691 of the Carpenters' Union. A motion was passed retiring the officers of Carpenters' Local 2691 and new officers were elected for New Carpenters' Local 2691. In addition, the persons present took a new oath of allegiance to the Carpenters' Union. A resolution was also adopted objecting to withdrawal of the Local from the Carpenters' Union.

³ All except seven of the Local's 180 members took part in the referendum.

On September 9, after the reopening of the Plywood plant, George A. Ulett, the respondent's manager and vice president, addressed the employees in groups of 40 or 50 men. He told them that if they went C. I. O. the Carpenters' Union would place a boycott on the products of the Plywood plant and that because of the boycott and of the contract of April 1937, the plant would have to close down, but that if they remained with the A. F. of L. he could promise them employment for an indefinite period of time. Ulett also told the workers that if the law would permit him he would gladly pay their per capita tax to the A. F. of L.

New Carpenters' Local 2691 continued its "reorganization" campaign during this period. The campaign was aided by the open sympathy and assistance of the respondent. Petitions objecting to the withdrawal of the Local from the Carpenters' Union were circulated throughout the plant during working hours. Various supervisory officials of the respondent participated in the circulation of these petitions and solicited members for New Carpenters' Local 2691.

On September 15 a committee of I. W. A. Local 2691 protested to A. L. Lung, the superintendent of the Plywood plant, concerning the discrimination against their union by the respondent. Although Lung assured the committee that there would be no further discrimination against the I. W. A. the conduct of the respondent continued the same.

New Carpenters' Local 2691, at a meeting held on September 16, 1937, passed a resolution suspending the officers of I. W. A. Local 2691 from membership and demanding their dismissal by the respondent in accordance with the "closed shop" provision of the contract of April 1, 1937. Following the meeting notice of such action was transmitted by New Carpenters' Local 2691 to the respondent.

On September 20 a committee consisting of the officers of I. W. A. Local 2691 again called on Lung to protest the activities of New Carpenters' Local 2691 within the plant. The members of this committee were informed by Lung that they had been discharged. At approximately the same time notices were posted by New Carpenters' Local 2691 on the bulletin board in the plant demanding the dismissal of the officers of I. W. A. Local 2691 and informing the employees that all workers who did not become members in good standing in New Carpenters' Local 2691 by 5 o'clock that afternoon would be discharged. I. W. A. Local 2691 promptly called a strike at the Plywood plant and, with the exception of about 20 men, all of the employees of the plant participated in the walk-out.

The members of I. W. A. Local 2691, at a conference held on September 22 or 23, offered to return to their jobs. This offer was rejected by the respondent which insisted that only those employees

maintaining membership in New Carpenters' Local 2691 would be permitted to work in the plant. At the time of the hearing in this case members of I. W. A. Local 2691 were still being denied employment at the Plywood plant.

B. *The contract*

The complaint alleges that the refusal of the respondent to retain in its employ after September 21, 1937, persons who were members of I. W. A. Local 2691 and who failed to maintain membership in good standing in Local No. 2691 of the Carpenters' Union constituted an unfair labor practice, within the meaning of Section 8 (1) and (3) of the Act. The respondent denies that such refusal constituted an unfair labor practice and contends that it was obligated to refuse employment to such persons by the "closed shop" provision of the contract of April 1, 1937. This provision reads as follows:

The party of the first part agrees to employ only Union labor in good standing in Local Union No. 2691. Any additional help required shall be hired through the Union Hiring Hall and will be issued a Temporary Working Card, and after thirty (30) days employment, if recommended by the Employer and the Authorized Union investigating committee, they shall be required to join the Union.

The question before us is similar to the one decided by this Board in the recent case of *M. and M. Wood Working Company and Plywood and Veneer Workers Union Local No. 102, affiliated with International Woodworkers of America*.⁴ For the reasons stated in that opinion we believe the respondent was not justified by the contract of April 1937, in refusing to retain in its employ those persons who were not members of New Carpenters' Local 2691.

The contract of April 1937, was made with Carpenters' Local 2691 and not with the national Carpenters' Union. The parties thereto, according to its preamble, are the respondent and "Plywood and Veneer Workers, Union Local 2691, affiliated with the United Brotherhood of Carpenters and Joiners of America, hereinafter known as the Union." The only persons to sign the agreement were Ulett and F. R. Bull, the president of Carpenters' Local 2691 at the time. It is clear that the reference to the Carpenters' Union is merely descriptive of the Local.

We also believe that Carpenters' Local 2691 legally withdrew from the Carpenters' Union. The constitution of the Carpenters' Union provides that a local union cannot withdraw so long as 10 members

⁴6 N L R B 372.

in good standing object thereto. Although it was generally known throughout the Plywood plant that Carpenters' Local 2691, at its meeting of July 25, had voted unanimously to affiliate with the I. W. A., no objection to such action was raised at the regular meetings of the Local of August 8 or August 22. Notice of the special meeting of August 29 and of the purpose thereof was posted by the Local on the bulletin board in the Plywood plant, yet only one member voted against the final severance of connections with the Carpenters' Union. Only three of the persons who attended the first meeting of New Carpenters' Local 2691 on September 4, 1937, had not signed applications for membership in the I. W. A.

Sixty-three persons did sign a petition, after the meeting of August 29, stating that they wished to retain the A. F. of L. charter. However, the evidence indicates not only that several of the persons who signed the petition were not members of the Local but that many of the signatures were obtained within the respondent's plant by supervisory officials of the respondent. Such petition cannot, therefore, be considered an objection to the withdrawal of Carpenters' Local 2691 from the Carpenters' Union.

Following their installation of the I. W. A. charter the membership of I. W. A. Local 2691 constituted in large part the previous membership of Carpenters' Local 2691. In addition, the officers of Carpenters' Local 2691 were retained as the officers of I. W. A. Local 2691.

In considering the question of whether the respondent in the *M. and M. Wood Working* case was justified in discharging, under the terms of a "closed shop" contract requiring membership in Local 2531 of the Carpenters' Union, employees who refused to maintain membership in a "reorganized" Local No. 2531 after the Local No. 2531 referred to in the contract had withdrawn from the Carpenters' Union and affiliated with the I. W. A. as Local No. 102, we said:

It is not necessary to decide here, however, whether or not the contract remained in force with the Plylock Local after the change in name and affiliation. If the contract continued as a valid contract with Local No. 102, as the successor of Local No. 2531, plainly the respondent had no authority thereunder to require membership in New Local No. 2531 as a condition of employment. On the other hand, if the contract expired as a result of withdrawal of the Plylock Local from the Carpenters' Union, the respondent likewise cannot rely upon the contract as justification for requiring membership in New Local No. 2531. In either event the respondent's activities constitute unlawful discrimination against its employees contrary to Section 8 (3) of the Act.

Since the contract in the present case has expired, it is not necessary to decide whether such contract remained in force with I. W. A. Local 2691 after the change in name and affiliation.

We find that the respondent refused to retain at work after September 21, 1937, employees who fail to maintain membership in good standing in New Carpenters' Local 2691. By such conduct the respondent has discriminated against such employees in regard to hire and tenure of employment, thereby discouraging membership in a labor organization.

The respondent, by means of the activities described above, has interfered with, restrained, and coerced its employees in the exercise of the rights guaranteed in Section 7 of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of the respondent set forth in Section III above, occurring in connection with the operations of the respondent described in Section I above, have a close, intimate, and substantial relation to trade, traffic, and commerce among the several States, and have led and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

In the *M. and M. Wood Working* case, because of the doubt in which the legal rights and obligations of the parties under the contract had been involved, we did not require the respondent to pay its wrongfully discharged employees back pay. The respondent's conduct in this case has been predicated upon a similar interpretation of the contract of April 1937. We shall not require it, therefore, to pay the employees refused employment after September 21, 1937, because of their failure to maintain membership in New Carpenters' Local 2691, back pay for the period between their discharge and the date of this decision.

Since the discharge of these employees constituted an unfair labor practice, however, we shall, in accordance with our usual custom, order the respondent, upon application, to offer reinstatement to their former or substantially equivalent positions to those employees who were refused employment after September 21, 1937, because of their refusal to maintain membership in New Carpenters' Local 2691. Further, we shall order the respondent to pay each of such employees back pay from the date of his application for reinstatement to the date of the offer of a position or placement upon the preferential list, as required by the order of the Board explained below.

Such reinstatement shall be effected in the following manner: All employees hired after September 21, 1937, shall, if necessary to

provide employment for those to be offered reinstatement, be dismissed. If, thereupon, by reason of a reduction of force, there is not sufficient employment immediately available for the remaining employees, including those to be offered reinstatement, all available positions shall be distributed among such remaining employees in accordance with the respondent's usual method of reducing its force, without discrimination against any employee because of his union affiliation or activities, following a system of seniority to such extent as has heretofore been applied in the conduct of the respondent's business. Those employees remaining after such distribution, for whom no employment is immediately available, shall be placed upon a preferential list prepared in accordance with the principles set forth in the previous sentence, and shall thereafter, in accordance with such list, be offered employment in their former or in substantially equivalent positions, as such employment becomes available and before other persons are hired for such work.

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

CONCLUSIONS OF LAW

1. Local Union No. 2691, affiliated with the International Woodworkers of America, and Local Union No. 2691, affiliated with the United Brotherhood of Carpenters and Joiners of America, are labor organizations, within the meaning of Section 2 (5) of the Act.

2. The respondent, by discriminating in regard to the hire and tenure of employment of its employees, thereby discouraging membership in a labor organization, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (3) of the Act.

3. The respondent, by interfering with, restraining, and coercing its employees in the exercise of the rights guaranteed in Section 7 of the Act, has engaged in and is engaging in unfair labor practices, within the meaning of Section 8 (1) of the Act.

4. The afore-mentioned unfair labor practices are unfair labor practices affecting commerce, within the meaning of Section 2 (6) and (7) of the Act.

ORDER

Upon the basis of the above findings of fact and conclusions of law, and pursuant to Section 10 (c) of the National Labor Relations Act, the National Labor Relations Board hereby orders that the respondent, Smith Wood Products, Inc., its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in Local Union No. 2691 of the International Woodworkers of America or encouraging membership in

Local Union No. 2691 of the United Brotherhood of Carpenters and Joiners of America, by (1) discharging or refusing to reinstate any of its employees or in any other manner discriminating in regard to their hire or tenure of employment or any term or condition of their employment, and (2) advising its employees that it desires them to join, or refrain from joining, any labor organization;

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of the right 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 or protection, as guaranteed in Section 7 of the National Labor Relations Act.

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

(a) Upon application, offer to those employees who were refused employment after September 21, 1937, because of their failure to maintain membership in New Carpenters' Local 2691, and have not since been fully reinstated, reinstatement to their former or substantially equivalent positions, without prejudice to their seniority and other rights and privileges, dismissing, if necessary, all employees hired since September 21, 1937, in the manner set forth in the section entitled "Remedy," above; and place those employees for whom employment is not immediately available upon a preferential list and offer them employment as it becomes available, in the manner set forth in said section;

(b) Make whole the employees ordered to be offered reinstatement for any loss of pay they will have suffered by reason of the respondent's refusal to reinstate them, upon application, following the issuance of this order, by paying to them, respectively, of a sum of money equal to that which each would normally have earned as wages during the period from five (5) days after the date of such application for reinstatement to the date of the offer of a position or placement upon the preferential list required by paragraph (a) above, less any amount each will have earned during that period;

(c) Post immediately in conspicuous places throughout the Plywood plant, and maintain for a period of at least sixty (60) consecutive days from the date of posting, notices to its employees stating that the respondent will cease and desist in the manner aforesaid;

(d) Notify the Regional Director for the 19th Region in writing within ten (10) days from the date of this order what steps the respondent has taken to comply herewith.