

In the Matter of UNION LUMBER COMPANY and LUMBER & SAWMILL  
WORKERS UNION LOCAL 2826

*Case No. R-659.—Decided June 23, 1938*

*Lumber Industry—Investigation of Representatives:* controversy concerning representation of employees: refusal by employer to recognize union as exclusive representative—*Unit Appropriate for Collective Bargaining:* production employees, including cooks and waiters, but excluding executives, clerical workers, foremen, strawbosses, timekeepers, hook tenders, and watchmen; employees of private contractor, included in unit by agreement of parties, excluded by Board—*Election Ordered*

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

*Mr. John B. Harman*, of Fort Bragg, Calif., and *Newmark & Strong*, by *Mr. Charles A. Strong*, of San Francisco, Calif., for the Company.

*Mr. Don Cameron*, of San Francisco, Calif., for the Union.

*Mr. William Anderson*, of Fort Bragg, Calif., for 674 employees of the Company.

*Mr. Willard Y. Morris*, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On October 18, 1937, Lumber and Sawmill Workers Union, Local 2826, herein called the Union, 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 Union Lumber Company, Fort Bragg, 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 January 10, 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 2, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company and upon the Union. On March 8, 1938, the Company filed an answer with the Regional Director, wherein, after reserving its right to object to the constitutionality of the Act and the jurisdiction of the Board, it denied the essential allegations of the petition. Pursuant to the notice, a hearing was held on March 21, 1938, at Fort Bragg, California, before Dwight W. Stephenson, the Trial Examiner duly designated by the Board. The Board and the Company were represented by counsel, the Union by its representatives, and all participated in the hearing. At the opening of the hearing William Anderson, claiming to represent 674 of the Company's employees, asked permission to make an appearance. The permission was granted. 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. Thereafter, a brief was filed with the Board, which has been given due consideration. 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

Union Lumber Company is a California corporation engaged in the lumber business and having its plant and mill site at Fort Bragg, California. It owns or controls the following: Mendocino Lumber Company of Mendocino, California; Mendocino County Retail Lumber Company, engaged exclusively in retail lumber business in Mendocino County, California; California Western Railroad, which operates entirely within California; National Steamship Company, which operates along the Pacific coast between California ports; and Union Lumber Company of Delaware, a sales agency of the Company with offices in Chicago, Illinois, and New York City.

The average annual output of the Company at its Fort Bragg plant is between 80,000,000 and 90,000,000 feet b.m. In 1937 it produced at that plant 89,028,000 feet b. m. Of this amount 60,850,000 feet were sold in California and there used; 24,814,000 feet were sold f.o.b. Fort Bragg and shipped to points outside the State; and 3,364,000 feet were sold to Redwood Export Company and eventually shipped in foreign commerce.

## II. THE ORGANIZATION INVOLVED

Lumber and Sawmill Workers Union, Local 2826, is a labor organization under the jurisdiction of the United Carpenters and Joiners of America, affiliated with the American Federation of Labor. It admits to its membership all persons engaged in lumber production in and around Fort Bragg.

## III. THE QUESTION CONCERNING REPRESENTATION

In October 1937, a committee of Union members at a meeting with officials of the Company requested that the Company recognize the Union as bargaining agent for all the production employees of the Company at its Fort Bragg plant. The Company officials denied the committee's contention that the Union represented a majority of the production employees and refused to grant the requested recognition.

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 and the Union agreed at the hearing that the unit should consist of all production employees of the Company working in the woods or in the mills at its Fort Bragg plant, including cooks and waiters, but excluding executives, clerical workers, foremen, strawbosses, timekeepers, hook tenders, and watchmen. The parties also agreed to the inclusion in the unit of certain persons employed by an unnamed private contractor on the ground that the Company substantially dictated the wages, hours, and working conditions of such persons. There is no showing in the record that the Company exercises any control whatsoever over the hiring or discharge of such persons; nor is there any showing as to the extent or nature of the alleged dictation relative to wages, hours, and working conditions. On the basis of the facts presented we are of the opinion that such

persons may not properly be included in the same unit with employees of the Company.

We find that the production employees of the Company, working in the woods or in the mills at its Fort Bragg plant, including cooks and waiters, but excluding executives, clerical workers, foremen, strawbosses, timekeepers, hook tenders, and watchmen, 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

The Company introduced evidence at the hearing showing that as of October 1937, the petition date, it employed approximately 1,130 persons within the unit we have found appropriate and that as of March 1938, the hearing date, it employed approximately 1,048 such persons. The Union claimed to represent a majority of such employees, but did not introduce in evidence membership cards or other evidence in support of this claim, William Anderson, the intervenor, submitted in evidence lists signed by approximately 674 employees of the Company, stating that the signatories did not wish to be represented for the purposes of collective bargaining by the Union or any other labor organization. The Union contested the validity of the lists, claiming that many persons signing them did so without understanding what they were doing. Under all the circumstances we find that the question concerning representation which has arisen can best be resolved by means of an election by secret ballot.

The Union asked that, if an election was held, eligibility to vote be based on the Company pay roll as of October 1937, the date of the filing of the petition. The Company took no definite position relative to the eligibility date. There is no showing in the record that the persons employed by the Company in October 1937, but not now working for it, have any definite expectancy of reemployment by the Company. In view of this fact and the time which has elapsed since the petition was filed, we are of the opinion that eligibility should be based on the pay-roll period next preceding March 21, 1938, the date of the hearing. Those eligible to vote in the election, therefore, shall be the persons in the appropriate unit who were employed by the Company during the pay-roll period next preceding March 21, 1938, excluding those who have since quit or been discharged for cause.

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 Union Lumber Company, Fort Bragg, California, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The production employees of the Company at its Fort Bragg plant, working in the woods or in the mills, including cooks and waiters, but excluding executives, clerical workers, strawbosses, foremen, timekeepers, hook tenders, and watchmen 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, 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 part of the investigation authorized by the Board to ascertain representatives for collective bargaining with Union Lumber Company, Fort Bragg, California, an election by secret ballot shall be conducted within twenty (20) days from the date of this Direction under the supervision and direction 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 the production employees of Union Lumber Company, working in the woods or in the mills at its Fort Bragg plant, who were employed by the Company during the pay-roll period next preceding March 21, 1938, including cooks and waiters, but excluding executives, clerical workers, foremen, strawbosses, timekeepers, hook tenders, watchmen and those who have since quit or been discharged for cause, to determine whether or not they desire to be represented by Lumber and Saw-mill Workers Union, Local 2826, United Brotherhood of Carpenters and Joiners of America, affiliated with the American Federation of Labor, for the purposes of collective bargaining.