

In the Matter of BLOEDEL-DONOVAN LUMBER MILLS and COLUMBIA VALLEY LUMBER COMPANY and INTERNATIONAL WOODWORKERS OF AMERICA, LOCAL No. 46

*Case No. R-695.—Decided July 12, 1938*

*Lumber Industry—Employer:* parent corporation and wholly owned subsidiary—*Investigation of Representatives:* controversy concerning representation of employees: controversy concerning appropriate unit; rival organizations; employer's refusal to recognize union as exclusive representative—*Unit Appropriate for Collective Bargaining:* employees of parent company and subsidiary, excluding supervisory employees with authority to hire and discharge and office employees; jurisdiction of, eligibility for membership in, and similarity of organization of both rival organizations; organization of business; central control of labor and personnel policies; history of collective bargaining relations with employer; no controversy as to classifications of employees to be included—*Contracts:* between employer and union, applicable only to members of the contracting union, no bar to determination of representatives—*Election Ordered*

*Mr. Patrick H. Walker* and *Mr. William A. Babcock, Jr.*, for the Board.

*Mr. W. H. Abbott* and *Mr. Harold Lant*, of Bellingham, Wash., for the parent Company and the Columbia Company.

*Mr. Orville K. Alger* and *Mr. Joseph P. Pemberton*, of Blaine, Wash., for the I. W. A.

*Mr. Lester C. Voris*, of Seattle, Wash., for the Sawmill Union.

*Mr. David Y. Campbell*, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On February 26, 1938, International Woodworkers of America, Local No. 46, herein called the I. W. A., filed a petition with the Regional Director for the Nineteenth Region (Seattle, Washington) alleging that a question affecting commerce had arisen concerning the representation of employees of Bloedel-Donovan Lumber Mills, Bellingham, Washington, herein called the parent Company, and requesting an investigation and certification of representatives pursuant to Section 9 (c) of the National Labor Relations Act, 49 Stat.

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449, herein called the Act. On March 7, 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 26, 1938, the I. W. A. filed an amended petition stating that the question concerning representation set forth in the original petition also affected employees of Columbia Valley Lumber Company, Bellingham, Washington, herein called the Columbia Company, and alleging that all employees of the Columbia Company and of the parent Company at its Cargo mill, including the crib boom, Larson mill, sash and door factory, box factory, fuel department, garage, and Saxon logging camp, except supervisory and office employees, constitute one unit appropriate for the purposes of collective bargaining.

On March 26, 1938, the Regional Director issued a notice of hearing, copies of which were duly served upon the parent Company, the Columbia Company, the I. W. A., and upon Lumber and Sawmill Workers Union, Local No. 2508, herein called the Sawmill Union, named in the petition and amended petition as a labor organization claiming to represent employees directly affected by the investigation. On April 1, 1938, the Regional Director denied the request of the parent Company and the Columbia Company for postponement of the hearing. Pursuant to the notice, a hearing was held on April 4, 5, 6, and 7, 1938, at Bellingham, Washington, before James M. Brown, the Trial Examiner duly designated by the Board. The Board, the parent Company, the Columbia Company, the I. W. A., and the Sawmill Union were represented by counsel and 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.

The Columbia Company appeared specially at the commencement of the hearing and moved for the dismissal of the amended petition as to it, on the grounds that the operations of the parent Company and the Columbia Company are separate and distinct, that the Columbia Company is not engaged in interstate commerce, and that the alleged question concerning the representation of its employees is not one affecting commerce. The motion was denied by the Trial Examiner. Thereupon, the parent Company and the Columbia Company, the latter reserving its objection to the jurisdiction of the Board, filed their separate answers embodying substantially the grounds of the above motion and controverting the allegations of the petition and amended petition as to the appropriate unit and the

I. W. A.'s claim to have been designated by a majority of the employees as their bargaining representative. At the close of the presentation of evidence concerning the operations of the parent Company and the Columbia Company, the latter renewed its motion to dismiss for lack of jurisdiction, and the Trial Examiner reserved his ruling. At the close of the presentation of all the evidence, the Columbia Company again renewed its motion to dismiss the amended petition for lack of jurisdiction, and the Trial Examiner denied the motion. The above rulings are hereby affirmed. During the course of the hearing the Trial Examiner made rulings on other motions and on objections to the admission of evidence. The Board has reviewed these rulings 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 COMPANIES

Bloedel-Donovan Lumber Mills, the parent Company, is a Maine corporation licensed to do business in the State of Washington, and has its principal place of business at Bellingham, Whatcom County, Washington. It is engaged in logging timber and the manufacture of lumber, boxes, shingles, sash and door products, and wood fuel. At Bellingham it operates the Larson mill, the Cargo mill, including a crib boom, a box factory, and a sash and door factory. The parent Company has at Bellingham a fuel department and a garage where its trucks and the trucks of the Columbia Company are serviced and repaired. All the above operations are known as the Bellingham operations. The parent Company also operates the Saxon camp, a logging camp located in Skagit County, Washington, about 35 miles from Bellingham. In addition to the above-mentioned operations, which are involved in this proceeding, it operates a mill known as the Skykomish mill and has logging camps in Clallam and King Counties, and shingle mills in King and Whatcom Counties, all in the State of Washington, but which are not involved here.

Over 97 per cent of the logs used in its manufacturing operations come from the parent Company's own timber lands. The remainder is purchased from contract loggers, known as "gypos", and on the open market. The parent Company produces approximately 30,000,000 millage board feet of lumber per month. Its products are sold through sales representatives in New York City; Chicago, Illinois; Los Angeles, California; Minneapolis, Minnesota; and in other principal lumber markets, and through wholesalers. Some products are sold to foreign countries through the Douglas Fir Ex-

port and Exploitation Company. Over 90 per cent of the finished products are sold and shipped outside the State of Washington. About 5 per cent of the finished products are sold to the Columbia Company for resale. Of the logs produced, 60 per cent are used in the parent Company's mills, and from 4 to 8 per cent are sold outside the State. The gross sales during 1937 amounted to \$6,800,000 in value. The parent Company employs approximately 1,328 persons at the operations involved in this proceeding.

Columbia Valley Lumber Company is a Washington corporation and is a wholly owned subsidiary of the parent Company. Its office, main retail yard, and detail sash and door shop are located in Bellingham, Washington, in close proximity to the Bellingham operations. It also operates retail yards at Ferndale, Lynden, and Everson, Whatcom County, Washington, which are situated 8 miles, 16 miles, and 18 miles, respectively, from Bellingham.

The Columbia Company is in the business of selling lumber, lumber products, and building materials at retail. All sales are made within the State of Washington. About 98 per cent of its purchases are also made within the State. Almost all the lumber and lumber products purchased, amounting to about 45 per cent of the Columbia Company's total purchases, are obtained from the parent Company. Thus, 85 per cent of the fir lumber and all the lathing are obtained from the parent Company. Some lumber and the other building materials, such as roofing, cement, and the like, which are not manufactured by the parent Company, are purchased elsewhere. It employs about 50 persons.

For the purposes of accounting the parent Company and the Columbia Company are treated as separate entities in transactions between them. Separate sets of books are kept. Thus, the Columbia Company's office and main yard are located on land leased from the parent Company at a stipulated rental. The parent Company furnishes the services of certain of its skilled employees to the Columbia Company, for which the latter pays the parent Company. Conversely, the Columbia Company charges the parent Company for glazing done by it for the latter's sash and door factory. The Columbia Company pays the parent Company for servicing and repairing its trucks. The parent Company furnishes accounting services to the Columbia Company at \$300 per month.

The parent Company's fuel department has office space in the Columbia Company's building, and in return furnishes the fuel to heat the building. In the past, some work of the Columbia Company has been performed with the equipment of the parent Company, apparently without charge. Employees of the parent Company are privileged

to purchase goods from the Columbia Company and to have the purchase price deducted from their wages, without written assignment.

The hiring and discharging of employees of the Columbia Company and the conduct of its daily operations are carried on by E. LeValley, its manager and secretary. Similar authority, however, is delegated to the respective superintendents of the operations conducted under the name of the parent Company. The determination of the policies of the Columbia Company, however, is vested in J. N. Donovan, who is its vice president and a director, and who occupies the same positions in the parent Company. Moreover, with the exception of LeValley, all the executive officers and directors of the Columbia Company are also executive officers and directors of the parent Company. Clearly, therefore, the parent Company exercises complete control over the operations of its subsidiary. While the latter is organized as a separate legal entity, in fact it is an integral part or department of the parent Company.<sup>1</sup>

## II. THE ORGANIZATIONS INVOLVED

International Woodworkers of America, Local No. 46, is a labor organization affiliated with the Committee for Industrial Organization. It admits to membership all employees of the parent Company and the Columbia Company in their operations involved in this proceeding, except supervisory employees having the right to hire and discharge, and office employees.

Lumber and Sawmill Workers Union, Local No. 2508, is a labor organization affiliated with the American Federation of Labor, admitting to its membership the same employees as the I. W. A. admits.

## III. THE QUESTION CONCERNING REPRESENTATION

Prior to August 7, 1937, it appears that the Sawmill Union represented a majority of all employees in the operations here involved. Under a contract dated July 22, 1936, it was recognized by the parent Company as the bargaining agent for its members in the Bellingham operations. Under a contract dated September 11, 1936, it was recognized as the representative of its members employed by the Columbia Company. Under a contract entered into during the latter part of 1936, the Sawmill Union was recognized by the parent Company as the bargaining agent for its members in the Saxon camp. While all three contracts are now in effect, the latter until March 1, 1939, and the former two until 30 days' notice of termination shall be given, it is to be noted that none of them grant exclusive bargaining rights.

Pursuant to these contracts, the Sawmill Union claims to be the

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<sup>1</sup> Cf. *Matter of Consolidated Edison Company of New York, Inc. and its Affiliated Companies and United Electrical and Radio Workers of America, etc.*, 4 N. L. R. B. 71.

recognized representative of its members in the Saxon camp and in the Bellingham operations. The extent of its membership therein is not shown in the record. As to employees of the Columbia Company, the Sawmill Union also contends that it is the bargaining agent for its members pursuant to the applicable contract. It further contends that it is the exclusive representative of employees of the Columbia Company, since it alleges that it has been designated by all said employees.

On August 7, 1937, a majority of the former members of the Sawmill Union formed the I. W. A. While they did not formally resign from membership in the Sawmill Union or relinquish its charter, it is clear that they are no longer members of the Sawmill Union and hence do not fall within the terms of the said contracts. Subsequently, the I. W. A. notified the parent Company, the Columbia Company, and other employers with whom the Sawmill Union had contracts, of the change in membership, and treated itself as the successor to the Sawmill Union as a party to the said contracts. It is not shown what effect, if any, the parent Company gave to the notification sent it. However, thereafter it dealt both with the I. W. A. and with the Sawmill Union concerning grievances.

In February 1938 the I. W. A. requested the parent Company to recognize it as the exclusive representative of the employees at the Bellingham operations, the Saxon camp, and the Columbia Company. The parent Company refused on the ground of the existence of the contracts with the Sawmill Union. The parent Company also questioned the propriety of including all the aforesaid employees in one unit. The I. W. A. has made no separate request of the Columbia Company to recognize it as the exclusive representative of its employees.

We find that a question has arisen concerning representation of employees of the parent Company and the Columbia 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 parent Company and the Columbia 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 I. W. A. contends that an appropriate unit consists of all employees of the parent Company at its Bellingham operations and

Saxon camp, together with all employees of the Columbia Company, excluding supervisory employees with authority to hire and discharge, and office employees.

The Sawmill Union contends that employees of the Columbia Company constitute a separate unit. It appears, although it is not entirely clear, that the Sawmill Union also contends that employees at the Saxon camp constitute a separate unit.

The parent Company maintains that employees at the Saxon camp constitute a separate unit. It further contends, as does the Columbia Company, that the latter's employees constitute a separate unit, over which the Board has no jurisdiction. We have found above that the Board has jurisdiction.

An analysis of the contentions of the parties shows that they are in agreement on two points: (1) that the employees at the Bellingham operations may properly be included in one bargaining unit, and (2) that office employees and supervisory employees with authority to hire and discharge should be excluded from the unit or units found to be appropriate. The questions remaining are whether either the employees at the Saxon Camp or the employees of the Columbia Company or both should be included with the employees at the Bellingham operations in a single unit or whether each of these three groups of employees constitutes an appropriate bargaining unit.

The jurisdiction assumed by both the I. W. A. and the Sawmill Union is identical. Each admits to membership all employees in the lumber industry in the logging, manufacturing, and retail branches, except supervisory employees having authority to hire and discharge, office workers, and certain other classifications of employees not material here. Each has geographical jurisdiction over employees of operations in Whatcom County, and the Saxon camp, which is situated in Skagit County. Both unions are organized along industrial lines.

Prior to August 7, 1937, the Sawmill Union included among its members employees at the Bellingham operations, the Saxon camp, and the Columbia Company. A sub-local union was established for the loggers in the vicinity of the various logging camps, since it was inconvenient for them to attend the regular meetings at Bellingham. Moreover, members at the Saxon camp met informally at the camp to discuss their individual problems. The authority to act in behalf of its members and to represent them in matters of collective bargaining, however, was retained by and continued to be exercised by the Sawmill Union. Subsequent to August 7 the Sawmill Union, as well as the I. W. A., was organized and functioned in the same manner.

From January to June 1935 the parent Company bargained with

the Sawmill Union as the representative of employees at the Bellingham operations. In June 1935, a strike occurred in the Bellingham operations and the retail sash and door shop of the Columbia Company. Shortly thereafter, the retail yards of the Columbia Company were picketed, resulting in their being closed. Although employees of the Saxon camp were not then fully organized and were not involved in the strike, it likewise was shut down because of the closing of the Bellingham operations. The strike was settled pursuant to a memorandum dated June 15, 1935, and signed by Donovan on behalf of the parent Company. The extent of applicability of the memorandum is not clear from its terms. In the main it covered the Bellingham operations, although it also provided for base pay for common labor in the logging camps. Its terms do not on their face relate to employees of the Columbia Company, but it is not shown that the strike as to them was settled pursuant to any separate agreement or memorandum.

Thereafter, the contracts already described in Section III above were negotiated and signed. In the negotiations the Sawmill Union acted through committees composed of employees at the Saxon camp, each of the Bellingham operations, and the Columbia Company, respectively, together with officers of the Sawmill Union. The parent Company participated in the negotiations through Donovan, its vice president, who signed the contracts on its behalf, and through the respective superintendents or managers of the Saxon camp and each of the Bellingham operations. The Columbia Company was represented by its manager and secretary, LeValley, who signed the contract on its behalf. LeValley, however, acted upon consultation with Donovan. The contracts were between the parent Company and the Columbia Company, respectively, and the Sawmill Union, approval of the terms in each instance being first made by the latter's entire membership. The evidence, therefore, shows that there is a history of successful collective bargaining prior to August 7, 1937, by all employees involved as one unit. It is not shown that this history has been altered materially by conditions existing subsequent to that date. Rather, the contrary conclusion is indicated by the evidence.

It has already been found that the Columbia Company constitutes an integral part of the parent Company's operations. The history of bargaining shown by the record and the jurisdictional claims as to membership of both organizations lead us to find that the employees at the Saxon camp and at the Columbia Company should be included with the employees at the Bellingham operations in one unit.

We find that all employees of the parent Company at its Cargo mill, including the crib boom, Larson mill, sash and door factory,

box factory, fuel department, garage, and Saxon camp, together with all employees of the Columbia Company, excluding supervisory employees with authority to hire and discharge, and office employees, constitute a unit appropriate for the purposes of collective bargaining, and that said unit will insure to employees of the parent Company and the Columbia 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

At the hearing, the I. W. A. introduced a membership list. A comparison with pay-roll lists introduced in evidence discloses that of the approximately 1,260 employees shown thereon as being in the appropriate unit, the names of some 1,076 appear on said membership list. The Sawmill Union, however, questions the authenticity of the designations represented by the membership list, and asserts that the names of some of its members appear thereon. No signed applications for membership or other original data were introduced in evidence. The extent of the claims of the Sawmill Union does not appear in the record. There is evidence, however, that the Sawmill Union has some membership in various operations in the appropriate unit.

Moreover, it appears that the pay-roll lists which were introduced include the names of some persons who are not actually employed by the parent Company at its Bellingham operations, and only approximately two-thirds of the employees named on the list for the Saxon camp are permanent employees. Pay rolls which were introduced in evidence were for periods when the operations of the parent Company were below the normal volume.

In view of these facts, we believe that the question concerning representation can best be resolved by holding an election by secret ballot. The petition was filed during a period in which the Bellingham operations were at less than normal capacity and while the Saxon camp was completely shut down. It appears that a more normal capacity of production and employment is attained during the summer months. In order to insure eligibility to the greatest number of employees, all employees employed in the appropriate unit during the last pay-roll period of each of the respective operations next preceding the date of this Direction shall be eligible to vote in the election.

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 Bloedel-Donovan Lumber Mills and Columbia Valley Lumber Company, Bellingham, Washington, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

2. All employees of the parent Company at its Cargo mill, including the crib boom, Larson mill, sash and door factory, box factory, fuel department, garage, and Saxon camp, together with all employees of the Columbia Company, excluding supervisory employees with authority to hire and discharge, and office employees, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the 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 Bloedel-Donovan Lumber Mills and Columbia Valley 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 Bloedel-Donovan Lumber Mills employed at its Cargo mill, including the crib boom, Larson mill, sash and door factory, box factory, fuel department, garage, and Saxon camp, and among all employees of Columbia Valley Lumber Company, employed during the last pay-roll period in each of said operations, respectively, next preceding the date of this Direction, excluding supervisory employees with authority to hire and discharge, office employees, and those who have since quit or been discharged for cause, to determine whether such employees desire to be represented by International Woodworkers of America, Local No. 46, affiliated with the Committee for Industrial Organization, or by Lumber and Sawmill Workers Union, Local No. 2508, affiliated with the American Federation of Labor, for the purpose of collective bargaining, or by neither.

[SAME TITLE]

## AMENDMENT TO DIRECTION OF ELECTION

*July 29, 1938*

On July 12, 1938, the National Labor Relations Board, herein called the Board, issued a Direction of Election in the above-entitled proceeding, the election to be held within twenty (20) days from the date of Direction, under the direction and supervision of the Regional Director for the Nineteenth Region (Seattle, Washington).

The Board, upon the recommendation of the Regional Director, for good cause shown, hereby amends its Direction of Election by striking therefrom the words "within twenty (20) days from the date of this Direction" and substituting therefor the words "at such time as the Board may in the future direct."

8 N. L. R. B., No. 27a.