

In the Matter of PERMA-STAIN COMPANY and INTERNATIONAL UNION,
UNITED AUTOMOBILE WORKERS OF AMERICA (AFL) ALMG. LOCAL
#754

Case No. 8-R-1594.—Decided August 23, 1944

Mr. B. C. Boer, of Cleveland, Ohio, for the Company.

Mr. Tom Brennan, of Cleveland, Ohio, for the Union.

Mr. Paul Bisgyer, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Union, United Automobile Workers of America (AFL) Almg. Local #754, herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Perma-Stain Company, Cleveland, Ohio, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Thomas E. Shroyer, Trial Examiner. Said hearing was held at Cleveland, Ohio, on July 27, 1944. The Company and the Union appeared and participated. All parties were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an opportunity to file briefs with the Board.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Perma-Stain Company is an Ohio corporation engaged in the manufacture of building specialties in Cleveland, Ohio. During the past year, the Company purchased for use in its manufacturing process raw materials valued in excess of a quarter of a million dollars, of which more than 25 percent came from outside the State of Ohio.

During the same period, its finished products exceeded a quarter of a million dollars in value, of which approximately 10 percent was shipped to points outside the State of Ohio.

The Company admits that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATION INVOLVED

International Union, United Automobile Workers of America Almg. Local #754, affiliated with the American Federation of Labor, is a labor organization admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

The Company has refused to grant recognition to the Union as the exclusive bargaining representative of its employees until the Union has been certified by the Board in an appropriate unit.

A statement of a Board agent, introduced into evidence at the hearing, indicates that the Union represents a substantial number of employees in the unit hereinafter found appropriate.¹

We find that a question affecting commerce has arisen concerning the representation of employees of the Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

IV. THE APPROPRIATE UNIT

There is no substantial disagreement among the parties regarding the appropriate unit. The Union requests a unit comprised of all the employees of the Company including the shipping clerk, stock and receiving clerk, watchmen, and truck drivers, but excluding office and clerical employees, foremen, assistant foremen, and all other supervisory employees. The Company acquiesces in the unit except that it contends that the assistant foremen should be included and the watchmen excluded.

It appears from the undisputed testimony of the Company's general manager that the Company regards its assistant foremen as supervisory. Assistant foremen are kept informed of management policies by their attendance at supervisory meetings, and, in the absence of their respective foremen, they exercise the foremen's authority and power of discipline over the employees in their respective departments. We shall exclude the assistant foremen from the unit.

¹ The Field Examiner reported that the Union submitted authorization cards, 94 of which bore apparently genuine original signatures; that the names of 78 persons appearing on the cards were listed on the Company's pay roll which contained the names of 119 persons in the appropriate unit; and that 3 cards were dated June 1944; 2 were dated July 1944; and 73 were undated.

The watchmen are neither militarized nor deputized, and are eligible to membership in the Union. We shall include them in the unit.

We find that all the employees of the Company, including the shipping clerk, stock and receiving clerk, watchmen, and truck drivers, but excluding office and clerical employees, foremen, assistant foremen, and all other supervisory employees with authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees or effectively recommend such action, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9 (b) of the Act.

V. THE DETERMINATION OF REPRESENTATIVES

We shall direct that the question concerning representation which has arisen be resolved by an election by secret ballot among the employees in the appropriate unit who were employed during the pay-roll period immediately preceding the date of the Direction of Election herein, including the regular part-time employees, subject to the limitations and additions set forth in the Direction.²

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 9, of National Labor Relations Board Rules and Regulations—Series 3, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with Perma-Stain Company, Cleveland, Ohio, an election by secret ballot shall be conducted as early as possible, but not later than thirty (30) days from the date of this Direction, under the direction and supervision of the Regional Director for the Eighth Region, acting in this matter as agent for the National Labor Relations Board, and subject to Article III, Sections 10 and 11, of said Rules and Regulations, among the employees in the unit found appropriate in Section IV, above, who were employed during the pay-roll period immediately preceding the date of this Direction, including regular part-time employees and employees who did not work during said pay-roll period because they were ill or on vacation or temporarily laid off, and including employees in the armed forces of the United States who present themselves in person at the polls, but excluding those employees who have

² The parties agreed, and we find, that regular part-time employees shall be eligible to vote at the election.

since quit or been discharged for cause and have not been rehired or reinstated prior to the date of the election, to determine whether or not they desire to be represented by International Union, United Automobile Workers of America, (AFL) Almg. Local #754, for the purposes of collective bargaining.

CHAIRMAN MILLIS took no part in the consideration of the above Decision and Direction of Election.