

In the Matter of FLOYD D. PENROD, JAY E. PENROD, DANIEL H. PENROD AND LEE PENROD D/B/A FLOYD PENROD & SONS TOOL & ENGINEERING COMPANY and INTERNATIONAL UNION, UNITED AUTOMOBILE, AIRCRAFT & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA (UAW-CIO)

Case No. 9-R-1557.—Decided November 7, 1944

Mr. Clyde A. Rutherford, of Muncie, Ind., for the Company.
Messrs. Joseph Harris and *Fred S. Grundy*, of Indianapolis, Ind., for the Union.
Mr. Bernard Goldberg, of counsel to the Board.

DECISION
AND
DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon a petition duly filed by International Union, United Automobile, Aircraft & Agricultural Implement Workers of America (UAW-CIO), herein called the Union, alleging that a question affecting commerce had arisen concerning the representation of employees of Floyd D. Penrod, Jay E. Penrod, Daniel H. Penrod and Lee Penrod, doing business as Floyd Penrod & Sons Tool & Engineering Company, Muncie, Indiana, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before Benjamin E. Cook, Trial Examiner. Said hearing was held at Muncie, Indiana, on October 4, 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

Floyd Penrod & Sons Tool & Engineering Company, a partnership composed of Floyd D. Penrod, Jay E. Penrod, Daniel H. Penrod and
59 N. L. R. B., No. 29.

Lee Penrod, is engaged in the manufacture of tools, dies, jigs, fixtures, pumps, special machinery, and metal stampings at its plant in Muncie, Indiana. During the calendar year 1943, the Company purchased raw materials valued in excess of \$10,000, of which more than 50 percent was shipped to the plant from points outside the State of Indiana. During the same period, the Company manufactured products whose value exceeded \$10,000, of which more than 10 percent was shipped to points outside the State of Indiana.

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, Aircraft & Agricultural Implement Workers of America (UAW-CIO), 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 production and maintenance 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

The Union seeks a unit comprising all production and maintenance employees, including the watchman, the receiving clerk and tool crib attendant, and the foremen, but excluding office and clerical employees, the draftsman, and all supervisory employees. The Company contends that the watchman, the receiving clerk and tool crib attendant, and the foremen should also be excluded from the unit.

Watchman. The Union seeks to include and the Company to exclude the single watchman employed by the Company. This employee, who is not militarized, acts as a fireman as well as a watchman

¹ The Field Examiner reported that the Union submitted 25 authorization cards; that the names of 21 persons appearing on the cards were listed on the Company's pay roll of August 11, 1944, which contained the names of 47 employees in the appropriate unit; and that the cards were all dated in July 1944.

and also does some cleaning work. We shall include the watchman in the unit.²

Receiving clerk and tool crib attendant. The Union would include and the Company exclude this employee who spends 40 percent of his time as a receiving clerk and the balance as a tool crib attendant checking out tools and keeping track of broken tools for reordering. He works in a small toolroom which is adjacent to the machine shop. Like production employees he is hourly paid, punches a time clock, and enjoys similar vacation rights. We are of the opinion that the interests of this employee are closely linked with those of the production and maintenance employees and shall, accordingly, include him in the unit.³

Foremen. The Company employs three foremen, Russell Bonham, Edward Pfleeger and Dan Jones, whom the Union would include on the ground that they are not supervisors within the Board's definition; the Company would exclude them.

Russell Bonham, a die maker, works at his trade and, in addition, directs 8 or 10 subordinates; with respect to these subordinates he acts as an instructor, a trouble shooter, and an expediter. Edward Pfleeger drives a truck about 3 hours a day, operates a boiler machine, and oversees the work of 8 or 10 employees engaged in spot welding. Dan Jones is in charge of about 7 employees; he sets dies and directs the punch press operatives and the employees engaged in manufacturing cooling pumps. Like Bonham and Pfleeger, Jones spends practically all of his time in manual work. It is conceded that the authority of each of these foremen as regards the employees working under them is identical. It appears that the foremen exercise only minor supervisory functions, and are, in fact, little more than group leaders. The plant involved herein is small from both the physical standpoint and the number of workers employed; the latter number about 30. It is owned by a partnership consisting of 4 men, all of whom actively engage in manual work in the plant. Decisions respecting the status of employees are apparently made by the partners on the basis of their own first-hand knowledge of the employees, rather than upon recommendations of the foremen. Under all the circumstances, we are of the opinion that the foremen are not supervisors within the Board's definition and we shall, accordingly, include them in the unit as production employees.

We find that all production and maintenance employees of the Company,⁴ including the watchman and the receiving clerk and tool crib

² See *Matter of Wilson & Co., Inc.*, 58 N. L. R. B. 666; *Matter of Hamrick Mills*, 57 N. L. R. B. 163.

³ See *Matter of Robins Dry Dock & Repair Company*, 33 N. L. R. B. 15.

⁴ Russell Bonham, Edward Pfleeger, and Dan Jones are deemed included.

attendant, but excluding office and clerical employees, the draftsman, and all 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 subject to the limitations and additions set forth in the Direction.⁵

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 Floyd D. Penrod, Jay E. Penrod, Daniel H. Penrod and Lee Penrod, doing business as Floyd Penrod & Sons Tool & Engineering Company, Muncie, Indiana, 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 Ninth 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 employees who did not work during the 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 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, Aircraft & Agricultural Implement Workers of America (UAW-CIO) for the purposes of collective bargaining.

⁵ The Union's request that its name appear on the ballot as UAW-CIO is hereby granted.