

IN the Matter of PACIFIC MANIFOLDING BOOK COMPANY, INC. and  
INTERNATIONAL PRINTING PRESSMEN AND ASSISTANTS' UNION OF  
NORTH AMERICA

*Case No. R-183.—Decided September 2, 1937*

*Printing Industry—Investigation of Representatives:* controversy concerning representation of employees: rival organizations; refusal by employer to recognize union as bargaining agency—*Unit Appropriate for Collective Bargaining:* production employees; agreement among craft unions that one of them act as representative for purposes of collective bargaining—*Election Ordered—Certification of Representatives.*

*Mr. Bertram Edises* for the Board.

*Brobeck, Phleger and Harrison*, by *Mr. Moses Laskey*, of San Francisco, Cal., for the Company.

*Mr. John F. Kelly*, of Oakland, Cal., for the Employee Representation Plan.

*Mr. Martin Kurasch*, of counsel to the Board.

## DECISION

### STATEMENT OF THE CASE

On February 15, 1937, the International Printing Pressmen and Assistants' Union of North America, herein called the Pressmen's Union, filed with the Acting Regional Director of the Twentieth Region (San Francisco, California) a petition alleging that a question affecting commerce had arisen concerning the representation of the employees of the Pacific Manifolding Book Company, Inc.,<sup>1</sup> 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 March 31, 1937, the National Labor Relations Board, herein called the Board, acting pursuant to Article III, Section 3, of National Labor Relations Board Rules and Regulations—Series 1, as amended, ordered the Regional Director to conduct an investigation and provide for an appropriate hearing.

On June 18, 1937, the Regional Director issued a notice of hearing to be held at San Francisco, California, on June 30, 1937, copies

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<sup>1</sup>The Company was incorrectly designated in the petition and in the order directing investigation and hearing as the Pacific Manifold Book Company. The papers were amended at the hearing on motion of counsel for the Board and with the consent of counsel for the Company.

of which were duly served upon the Company, upon the Pressmen's Union, and upon the Employee Representation Plan of the Pacific Manifold Book Company, Inc., herein called the Plan, which was named in the petition as purporting to represent the Company's employees. On June 25, 1937, a notice of postponement of hearing until July 8, 1937, was served upon the parties. On June 28, 1937, the Company filed an answer. The place of the hearing was changed by a notice issued on June 29, 1937, and duly served.

Pursuant to the above notices a hearing was held at San Francisco, California, on July 8 and 9, 1937, before Clifford D. O'Brien, the Trial Examiner duly designated by the Board. The Board and the Company were represented by counsel and the Plan was represented by John F. Kelly, its president. All participated in the hearing. Full opportunity to be heard, to examine and to cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded to all parties. Objections to the introduction of evidence were made during the course of the hearing by counsel for the parties, and several motions were made by counsel for the Company. The Board has reviewed the rulings of the Trial Examiner upon these motions and objections, 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

The Pacific Manifold Book Company, Inc. was incorporated on December 21, 1934, under the laws of Delaware, and has been qualified to do business in California since December 29, 1934. The Company and its predecessor have maintained their chief plant and main office at Emeryville, near the city of Oakland, California, for 40 years. The Company has another plant at Los Angeles. Its authorized capitalization is 1000 shares of common stock of a par value of \$100. There is only one class of stock. All of the authorized capital stock is outstanding. By virtue of common stock ownership, the Company is affiliated with the American Salesbook Company and Gilman Fanfold Company, both of Niagara Falls, New York. The Company has a registered trade mark for use in interstate commerce.<sup>2</sup>

The Company is engaged in the manufacture of manifold forms, which are forms covering the requirements of the various functions of a business where more than one copy of a transaction is desired to be made at one writing. The product is produced on rotary presses from roll paper.

<sup>2</sup> Board's Exhibits No. 21 (a), 21 (b) and 21 (c).

The raw materials are secured from five states in addition to California.<sup>3</sup> The close correspondence between the percentage of the total amount of raw materials used in 1936 that was produced by each state and the percentage of the total amount used in the first five months of 1937 that was produced by each state is indicative of a steady flow of raw materials in interstate commerce from Oregon, New York, Washington, Pennsylvania, and New Jersey.

Paper constitutes 90 per cent of the raw materials used. During 1936 the Company bought about 228 tons of paper per month, and during the first five months of 1937, the average rose to from 240 tons to 245 tons. Oregon is the best source of supply of the rolled paper that is used in making the manifolds; California has no large scale production of this kind of paper.

The purchase of the paper is arranged for at the San Francisco sales offices of the producers, and the paper is bought f. o. b. San Francisco. Large supplies of paper are bought at one time. The sellers do not keep a large stock on hand at San Francisco and very often ship the paper by railroad and water, directly from their plants to the Emeryville plant. About a six months supply of the principal types of paper are kept on hand in the Emeryville plant and the stock is constantly being replenished.

Some of the special machines that are needed for the printing of manifolds, and the parts for these machines, are made in the machine shop of the Company. The raw materials for these presses and parts are purchased both locally and in the East. A substantial portion of these machines, however, are either bought directly from a New York factory or are assembled at Emeryville from parts bought from this factory.

The Company engages in some direct mail circularization of a selected number of prospects in the eleven western states which the Company serves. The Company maintains sales offices at Seattle and Spokane, Washington; Portland, Oregon; Phoenix, Arizona; Salt Lake City, Utah; and Denver, Colorado. The total sales force consists of about 125 to 130 persons. Salesmen have definite assigned territories. The orders obtained are sent to Emeryville for accept-

<sup>3</sup>The raw materials, in terms of dollars, purchased for use in the Emeryville plant, are as follows:

	1936	1937 (through the month of May)
Oregon.....	\$196, 716	\$53, 321
New York.....	87, 974	21, 466
Washington.....	9, 765	2, 588
New Jersey.....	50, 851	17, 345
Pennsylvania.....	8, 203	1, 872
California.....	18, 271	4, 406
Totals.....	\$371, 780	\$100, 998

ance or rejection; as a practical matter, they are usually accepted. Goods are sent out by straight bill of lading, f. o. b. Emeryville.

The products of the Company, being made to order for the individual purchaser, are purchased for use, and not for resale. Only ten per cent of the total production is kept as standard stock.

From the time that the order is received to the time that it is ready for shipment, work is being constantly performed upon it, unless a previous order has been given precedence. When an order comes in it is acknowledged, specifications are checked to see that there are no errors on the part of the salesman, it is sent to the composing room, where proofs are made, to the stereotype room, where the plates are cast, and then to the press where the order is to be manufactured. It is run off and then delivered to the shipping department and finally to the shipping room, where it is sent out. It ordinarily takes about 30 days to fill a formal order.

In 1936 the shipments from the plant totalled \$1,644,873.43 and in the first five months of 1937, they totalled \$739,898.52. About 35 per cent of the product is shipped out of California.<sup>4</sup>

The Company is one of the largest of its kind. J. Morton Butler, the general manager, testified that he knew of no bigger firm in the business, though he thought it possible that the McKaskey Register Company in the East, and the United Autographic Register Company in Oakland might be. The chief competitors, besides the two mentioned, are the Nebraska Sales Book Company of Lincoln, Nebraska, the Schwabacher-Frey Company, of San Francisco, California, and the Sunset-McKee Company of Oakland.

The Company employs 215 men in the production departments, of whom there are 24 in the composing room, 12 in the stereotype department, six in the job press department, 53 in the press department, 78 in the finishing department, four in the shipping department, 13 in the carbon and slitting department, 11 in the machine shop department, and 14 engaged in general maintenance.

## II. THE ORGANIZATIONS INVOLVED

### *A. The petitioning unions*

The Pressmen's Union is a labor organization affiliated with the American Federation of Labor. It charters subordinate unions of printing pressmen, assistants, paper handlers, roller-makers, newsboys, carriers and such other organizations not chartered by any other international union.

The East Bay Corrugated Fibre Products and Waxed Paper Workers Union, Local No. 382, herein called Local No. 382, is a labor

<sup>4</sup>The Company serves mainly the 11 western states—California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Texas, Utah, Washington, Wyoming

organization chartered by and subordinate to the Pressmen's Union. It admits to membership the miscellaneous workers in the paper and printing industry who are not sufficiently skilled to obtain the scale of wages earned by the pressmen or their assistants. Local No. 382 represents an attempt to organize these miscellaneous workers. It has jurisdiction in the East Bay area, covering the cities of Alameda, Berkeley, Oakland, and Emeryville. A similar union, known as Local No. 362, covers the San Francisco area.

*B. The International Typographical Union*<sup>5</sup>

The International Typographical Union, herein called the I. T. U., is a labor organization affiliated with the American Federation of Labor, admitting compositors to membership. Local No. 36, chartered by the I. T. U., claims jurisdiction over printing establishments in the East Bay area, including that of the Company.

*C. The International Stereotypers and Electrotypers*<sup>5</sup>

The International Stereotypers and Electrotypers Union of North America, herein called the I. S. & E. U., is a labor organization affiliated with the American Federation of Labor, admitting electrotypers and stereotypers to membership. The Emeryville plant of the Company is under the jurisdiction of Local No. 29 of the I. S. & E. U.

*D. Employee Representation Plan*

The Plan is a labor organization which automatically includes all the production employees of the Company. It was formed in 1934 in an attempt to effect a more permanent bargaining machinery than had been provided by the house committees chosen from time to time that worked in conjunction with the Mutual Aid Society, which had been in existence at the plant for 22 years.

III. THE APPROPRIATE UNIT

All of the work in producing the manifolds is performed on the ground floor of the Emeryville plant. The offices of the Company are on the second floor. The various departments are either in separate rooms or in different parts of the floor. But there is some overlapping of foremen in that one foreman may supervise more than one department. There is some interchange of men among the various departments.

The Plan has purported to bargain for all the production workers. Local No. 382 wants to be recognized as the bargaining representa-

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<sup>5</sup> Neither of these unions was an intervenor in this proceeding. Each of them, as indicated below, wanted Local No. 382 to represent all the employees in the plant for purposes of collective bargaining.

tive for all production employees, thus excluding those engaged in administrative, sales, research, accounting, clerical, stenographic and other office help, executives and secretaries. The I. T. U., though it encompasses in its membership only the compositors, agrees that all of the production employees constitute one unit. The I. S. & E. U. also concurs. The Company is agreed that all of the production employees constitute one unit.

The only disagreement as to unit arises from the desire of Local No. 382 to include working foremen (i. e. foremen who actually do work with their hands in the process of production), of whom there are about nine, with the production employees. The Plan excludes them. There has not been sufficient evidence presented by Local No. 382 that the interests of the working foremen are so allied with those of the regular production employees as to warrant their inclusion in one unit.

In view of all the afore-mentioned facts and in order to insure to the production employees of the Company the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of the Act, we find that all the production employees of the Emeryville, California, plant of the Company, excluding those engaged in administrative, sales, research and accounting; clerical, stenographic and other office help; foremen, working foremen, executives, and secretaries, constitute a unit appropriate for the purposes of collective bargaining.

#### IV. THE QUESTION AS TO REPRESENTATION

The Corrugated Fibre Products and Waxed Paper Workers Locals were chartered by the Pressmen's Union in an attempt to organize the various workers in the printing industries who did not do that type of work to which the rates of the pressmen and assistants applied. Since its inception in October 1936, Local No. 382 has negotiated agreements with the California Packing Co., the Western Waxed Paper Co., the Bates Valve Bag Co., and four or five box plants in Oakland. In order to strengthen its bargaining position and to facilitate organization, an informal understanding was reached, in the fall of 1936, with the I. T. U. and the I. S. & E. U., to the effect that the Pressmen's Union should represent all of the afore-mentioned miscellaneous production employees for purposes of collective bargaining.

In November 1936, one month after Local No. 382 was organized, the Plan reached a wages and hours agreement with the Company. This agreement was never put into formal form, nor was it ever signed by the Company. The wage scales, in mimeographed form, were given to the foremen and employees could look at them on request.

Local No. 382 began its drive to organize the Company's employees in January 1937. At that time, Moran, president of Local No. 382, and Hurd, secretary-treasurer of Local No. 36 of the I. T. U., had further discussions relative to the representation of all production employees in the manifolding companies by Local No. 382.

A mass meeting of the Company's employees was called by Local No. 382 on January 31, 1937. Between 30 and 40 workers attended; 16 signed application cards for membership in the Pressmen's Union. At the meeting, one worker said that he had parked his car two blocks away so that his attendance at the meeting could not be noticed. At a second mass meeting, held on March 27, between 20 and 25 workers attended. Gilmore, secretary-treasurer of Local No. 382, was told that there was a foreman present at the meeting, and attempts to induce those attending to sign membership application cards proved unavailing. He was told to "drop up to the house and we will talk it over there." Gilmore stated that in his meetings with the men, in the plant, on street corners and in their homes, more than 150 told him they would vote for Local No. 382 if an election were called.

Gilmore stated that more than half of these expressions of a preference for Local No. 382 were obtained subsequent to March. Counsel for the Company moved to dismiss on the ground that the petition had been filed on February 15, 1937, a date on which a majority of the employees had not expressed a preference for Local No. 382. The motion was properly denied. Although a majority is required for a certification of representatives, an election is merely part of the investigation to ascertain representatives for collective bargaining. Proof of a majority is not a prerequisite to the calling of an election; if there were such proof, an election would not be necessary.

In May, Hurd of the I. T. U. and Medina, of the I. S. & E. U., met with Gilmore at the latter's home on two occasions, to draw up an agreement which Local No. 382 was to present to the Company for acceptance. This agreement included wage scales for the stereotypers and included the clause "Typographical subject to typographical contract".<sup>6</sup> This, together with the testimony of Gilmore, Hurd, and McElhanon, president of the I. S. & E. U. local, leaves little doubt that it was agreed that Local No. 382 was to represent the compositors and stereotypers.

In early June or late May, a request was made on the Company to put a notice on the time clock stating that it was not opposed to its employees joining Local No. 382. This was refused on the ground that such an expression would be tantamount to favoring Local No. 382, and that, furthermore, the employees of the Company were represented by the Plan.

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<sup>6</sup> Board's Exhibit No. 14 (1). The testimony was that an agreement containing a wage scale and relating to working conditions for the composing room employees was attached.

On June 6, 1937, a mass meeting of the employees of the Company, the Sunset-McKee Company, and the United Autographic Register Company was called to discuss the proposed agreement which was to be offered to each of the companies. There was a picnic for the Company's employees on that day and only six of such employees were at the mass meeting. The employees present at the meeting approved the agreement.

The proposed agreement was mailed to the Company on July 9 or 10 and a reply dated July 11 was received by Gilmore to the effect that "you are familiar with the manner in which our employees are now represented and our policy in the matter referred to in your letter".<sup>7</sup> On June 22, the I. T. U., fearful that the Company's refusal to bargain with Local No. 382 would mean that some other bargaining agent, not desired by the I. T. U., would be set up, and desiring to "protect the interests of the Typographical Union in any future developments should they arise . . .", wrote a letter to the Company asserting that the I. T. U. Local No. 36 was the authorized representative of the employees doing composing room work and requesting that the Company negotiate with its representatives. Hurd testified that the I. T. U. was, however, at all times willing and is still willing to have Local No. 382 represent the compositors for purposes of collective bargaining.

Gilmore, in his organizing efforts, had induced the compositors to sign up with Hurd as members of the I. T. U. These men at first did not want to become affiliated with Local No. 382, but when Hurd apprised them of the situation, they agreed. Seventeen compositors had signed these membership application cards just prior to June 22.

Since every employee is automatically a member of the Plan, the large number of employees participating in elections of officers of the Plan can have no significance. It is significant that 98 per cent of the workers in the Sunset-McKee Company, a competitor in the nearby city of Oakland, have joined Local No. 382. The Board believes that an election by secret ballot is essential if a true choice of representatives for purposes of collective bargaining is to be made.

On the basis of these facts, and upon the whole record, we find that a question has arisen concerning the representation of the employees of the Company.

#### V. THE EFFECT OF THE QUESTION CONCERNING REPRESENTATION ON 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

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<sup>7</sup> Board's Exhibit No. 15.

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.

#### VI. CONDUCT OF ELECTION

We further find that an election by secret ballot is necessary to determine the proper representatives for collective bargaining and thus resolve the question concerning representation. Those eligible to vote shall be all the production employees employed by the Company at its Emeryville, California, plant during the week immediately preceding the date of this Direction of Election, excluding those engaged in administrative, sales, research, and accounting; clerical, stenographic, and other office help; foremen, working foremen, executives, and secretaries.

#### CONCLUSIONS OF LAW

On the basis of the above findings of fact, the Board makes the following conclusions of law:

1. A question affecting commerce has arisen concerning the representation of the employees at the Emeryville, California, plant of the Pacific Manifolding Book Company, Inc., within the meaning of Section 9 (c), and Section 2, subdivisions (6) and (7) of the National Labor Relations Act.

2. All of the production employees at the Emeryville, California, plant of the Pacific Manifolding Book Company, Inc., excluding those engaged in administrative, sales, research, and accounting; clerical, stenographic, and other office help; foremen, working foremen, executives, and secretaries, 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, 49 Stat. 449, 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 the Pacific Manifolding Book Company, Inc., an election by secret ballot shall be conducted within ten days from the date of this Direction, under the direction and supervision 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—Series 1, as amended, among all the production employees employed by the Company at its Emeryville, California, plant during the week immediately preceding the date of this Direction of Election, excluding those engaged in administrative, sales, research, and accounting; clerical, stenographic, and other office help; foremen, working foremen, executives, and secretaries, to determine whether they desire to be represented by East Bay Corrugated Fibre Products and Waxed Paper Workers Union, Local No. 382, or by the Employee Representation Plan, for the purposes of collective bargaining.

MR. EDWIN S. SMITH took no part in the consideration of the above Decision and Direction of Election.

[SAME TITLE]

### CERTIFICATION OF REPRESENTATIVES

*October 15, 1937*

On February 15, 1937, the International Printing Pressmen and Assistants' Union of North America, herein called the Pressmen's Union, filed with the Acting Regional Director of the Twentieth Region (San Francisco, California) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of the Pacific Manifolding Book Company, Inc., 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.

Pursuant to notice duly served upon the Company, upon the Pressmen's Union, and upon the Employee Representation Plan of the Pacific Manifolding Book Company, Inc., herein called the Employee Representation Plan, which had been named in the petition as purporting to represent the Company's employees, a hearing was held at San Francisco, California, on July 8 and 9, 1937, before Clifford D. O'Brien, the Trial Examiner duly designated by the National Labor Relations Board, herein called the Board. On September 2, 1937, the Board issued a Decision and Direction of Election. The Direction of Election provided that an election by secret ballot be held among all the production employees employed by the Company at its Emeryville, California plant, excluding those engaged in administrative, sales, research, and accounting; clerical, stenographic, and other office help; foremen, working foremen, executives, and secretaries, to determine whether they wished to be represented by East Bay Corrugated Fibre Products and Waxed Paper Workers Union, Local No. 382, chartered by the Pressmen's Union, or by the Employee Representation Plan, for the purposes of collective bargaining.

Pursuant to the direction, balloting was conducted on September 16, 1937. Full opportunity was accorded to all the parties to this investigation to participate in the conduct of the secret ballot and to make challenges.

On September 18, 1937, the Regional Director, acting pursuant to Article III, Section 9 of National Labor Relations Board Rules and Regulations—Series I, as amended, issued and duly served upon the parties to the proceeding his Intermediate Report on the ballot. No exceptions to the Intermediate Report have been filed by any of the parties.

As to the results of the secret ballot the Regional Director reported as follows:

Total number eligible to vote.....	205
Total number ballots cast.....	193
Total ballots cast for:	
a. East Bay Corrugated Fibre Products and Wax Paper Workers Union, Local No. 382.....	46
b. Employee Representation Plan.....	147
Total number challenged ballots.....	0
Total number void ballots.....	0
Total number blank ballots.....	0

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 I, as amended,

IT IS HEREBY CERTIFIED that the Employee Representation Plan has been selected by a majority of all the production employees employed by the Pacific Manifold Book Company, Inc., at its Emeryville, California plant, except those engaged in administrative, sales, research, and accounting; clerical, stenographic, and other office help; foremen, working foremen, executives, and secretaries, as their representative for the purposes of collective bargaining, and that pursuant to Section 9 (a) of the National Labor Relations Act, the Employee Representation Plan is the exclusive representative of all the production employees employed by the Pacific Manifold Book Company, Inc., at its Emeryville, California plant, except those engaged in administrative, sales, research and accounting; clerical, stenographic and other office help; foremen, working foremen, executives, and secretaries, for the purposes of collective bargaining in regard to rates of pay, wages, hours of employment, and other conditions of employment.

CHAIRMAN MADDEN took no part in the consideration of the above Certification of Representatives.