

In the Matter of THE ONTARIO KNIFE COMPANY and CUTLERY  
WORKERS LOCAL UNION No. 20452

*Case No. R-272.—Decided November 4, 1937*

*Cutlery Manufacturing Industry—Investigation of Representatives:* controversy concerning representation of employees; refusal by employer to meet with non-employee representative of employees, and to grant union's request for a "100 per cent union shop"; substantial doubt as to majority status—*Unit Appropriate for Collective Bargaining:* production and maintenance employees; no controversy as to—*Election Ordered—Certification of Representatives.*

*Mr. Norman F. Edmonds*, for the Board.

*Mr. James A. Chrestensen*, of Franklinville, N. Y., for the Company.

*Mr. Daniel B. Shortal*, of Buffalo, N. Y., for the Union.

*Miss Fannie M. Boyls*, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On August 7, 1937, Cutlery Workers Local Union No. 20452, herein called the Union, filed with the Acting Regional Director for the Third Region (Buffalo, New York) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of The Ontario Knife Company, Franklinville, New York, herein called the Company, and requesting the National Labor Relations Board, herein called the Board, to conduct an investigation pursuant to Section 9 (c) of National Labor Relations Act, 49 Stat. 449, herein called the Act. On August 8, 1937, 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 a hearing upon due notice.

On August 21, 1937, the Acting Regional Director issued a notice of a hearing to be held on August 26, 1937, at Franklinville, New York. Pursuant to the notice a hearing was held on August 26, 1937, at Franklinville, New York, before Irving G. McCann, the Trial Ex-

aminer duly designated by the Board. The Board and Union were represented by counsel, and the Company by its president, and all parties participated in the hearing. Full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. A motion to continue the hearing to a later date was made by the Company and refused by the Trial Examiner. During the course of the hearing, the Trial Examiner also made several rulings on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner upon said motion 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 Ontario Knife Company is a corporation, organized in 1902 under the laws of the State of New York. It operates a plant at Franklinville, New York, at which it manufactures cutlery, consisting of knives, spatulas, paint scrapers, and forks.

It employs approximately 175 people. Of this number about 153 are production and maintenance employees below the grade of foreman.

The principal raw material used by the Company in the manufacture of its cutlery is steel. Most of the steel is purchased in Pennsylvania, although a substantial amount is purchased within the State of New York. It is transported to the Company's plant by rail or by truck lines.

In the manufacture of handles for the cutlery, various types of wood, hard rubber, bone, stag horns and composition are used. Beech wood is purchased within the State of New York, and birch in Massachusetts and New Hampshire. Other woods, such as cocobola and rosewood, and stag horns come originally from foreign countries, but are purchased by the Company from firms in New York City, who buy directly from abroad, and are shipped by such firms over the Pennsylvania Railroad lines to the Company's plant. The Pennsylvania Railroad passes into the State of Pennsylvania before reaching the Company's plant in Franklinville, New York, and consequently all shipments from New York City to the Company over those lines are made in interstate commerce. Hard rubber and composition handles, already molded, rivets, and washers are purchased from states other than New York and shipped to the Company by rail. Abrasives of various types are purchased from all over the United States.

The officers of the Company act as its sales agents and travel throughout the United States in distributing its products. Although most of its products are sold directly within the State of New York, over 50 per cent are shipped, either directly or indirectly, outside the State of New York to various points in the country. Some of the products are shipped to Canada, England, and other foreign countries. In any event, a substantial portion of the Company's products is shipped directly to places outside the State of New York. It is customary for the Company to use either the railroads or parcel post in delivering the goods sold.<sup>1</sup>

## II. THE ORGANIZATION INVOLVED

Only one Union, Cutlery Workers Local Union No. 20452, has claimed to represent any of the employees of the Company. That union is a labor organization chartered by the American Federation of Labor on March 1, 1937. It admits to membership all production and maintenance employees of the plant except foremen and other supervisory employees.

## III. THE QUESTION CONCERNING REPRESENTATION

Shortly after the Union was chartered, a committee chosen by it interviewed the president of the Company concerning matters included in a petition presented to said Company.<sup>2</sup> The testimony was conflicting as to whether the Company was then, or thereafter, requested to recognize the Union as the exclusive representative of its employees for the purposes of collective bargaining, except in so far as such request was joined with a request for a "100 per cent Union shop". The latter request was refused. No evidence that the Union represented a majority of the employees was ever asked for by the Company.

Subsequent to the first meeting, several other meetings were held between the Company's president and the committee. At one of these meetings he was requested to admit to the meeting a member of the American Federation of Labor who was not an employee of the Company but who had been chosen by the Union as a member of the committee. The Company's president announced that he would not meet with said representative nor with any other outsider.

We find that a question has arisen concerning the representation of employees of the Company.

<sup>1</sup> Testimony concerning the volume of the Company's business and a comparison of its size with that of other cutlery manufacturers was excluded on the objection of the Company that such disclosures would be valuable to its competitors and harmful to itself.

<sup>2</sup> Petitioner's Exhibit No. 5.

## IV. THE EFFECT OF THE QUESTION OF REPRESENTATION ON COMMERCE

We find that the question concerning representation, which has arisen 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, between the several States and foreign countries, and between points within the State of New York but through the State of Pennsylvania, and tends to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

## V. THE APPROPRIATE UNIT

The Union in its petition for an investigation and certification of representatives claimed that all production and maintenance employees of the Company's plant constituted a unit appropriate for the purposes of collective bargaining. The Company raised no objection to this classification and introduced in evidence a pay roll list containing the names of its production and maintenance employees as of July 31, 1937, the pay day immediately preceding the date when the petition for an investigation was filed. We exclude foremen and other supervisory employees in accordance with our usual practice where no evidence is introduced to indicate that they should be included in the unit with the production and maintenance employees.

In order to insure to the employees of The Ontario Knife 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 of the production and maintenance employees of the Company, excluding foremen and other supervisory employees, constitute a unit appropriate for the purposes of collective bargaining with respect to rates of pay, wages, hours of employment, and other conditions of employment.

## VI. THE DETERMINATION OF REPRESENTATION

The Union, through its president, testified at the hearing that it had approximately 140 members in good standing, 86 of whom had paid their dues in full. The financial book of the Union, which was introduced in evidence in support of such testimony, however, showed that less than a majority of the Company's 153 employees who were eligible for membership in the Union had paid their dues in full at the date of the hearing and at the date of the filing by the Union of the petition for an investigation. A bare majority of said employees were less than three months delinquent in the payment of their dues at the time said petition was filed.

The financial book of the Union, containing the names of the alleged members of the Union, was admitted in evidence for examination by the Board and its agents only. The Company, therefore, was given no opportunity to inspect the list of members nor cross-examine the Union's president, and only witness, in respect thereto.

We therefore find that the question which has arisen concerning the representation of employees of the Company can best be resolved by the holding of an election by secret ballot. Those employees in the appropriate unit who were on the pay roll of the Company on July 31, 1937, the pay day immediately preceding the date when the question concerning representation arose, shall be eligible to vote.

#### CONCLUSIONS OF LAW

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 The Ontario Knife Company, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. All production and maintenance employees employed by the Company in its plant at Franklinville, New York, excluding foremen and other supervisory employees, 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 a part of the investigation ordered by the Board to ascertain representatives for the purposes of collective bargaining with The Ontario Knife Company, Franklinville, New York, an election by secret ballot shall be conducted within fifteen (15) days from the date of this Direction, under the direction and supervision of the Acting Regional Director for the Third 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 and maintenance employees of The Ontario Knife Company on its pay roll of July 31, 1937, excluding foremen and other supervisory employees, and those who have since quit or been dis-

charged for cause, to determine whether or not they desire to be represented by Cutlery Workers Local Union No. 20452 for the purposes of collective bargaining.

[SAME TITLE]

### CERTIFICATION OF REPRESENTATIVES

*December 4, 1937*

On August 7, 1937, Cutlery Workers Local Union No. 20452, herein called the Union, filed with the Acting Regional Director for the Third Region (Buffalo, New York) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of The Ontario Knife Company, Franklinville, New York, 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 August 8, 1937, 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.

Pursuant to notice duly served upon the Company and the Union, a hearing was held at Franklinville, New York, on August 26, 1937, before Irving G. McCann, the Trial Examiner duly designated by the Board. On November 4, 1937, the Board issued a Decision and Direction of Election. The Direction of Election provided that an election by secret ballot should be held among the production and maintenance employees of The Ontario Knife Company on its pay roll of July 31, 1937, excluding foremen and other supervisory employees and those who had since quit or been discharged for cause, to determine whether or not they desired to be represented by Cutlery Workers Local Union No. 20452 for the purposes of collective bargaining.

Pursuant to the Direction, balloting was conducted on November 19, 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.

Thereafter, the Regional Director, acting pursuant to Article III, Section 9, of the Rules and Regulations, issued and duly served upon the parties to the proceeding his Intermediate Report upon the secret ballot. No exceptions to the Intermediate Report have been filed by either of the parties.

As to the balloting and its results, the Regional Director reported as follows:

Total number eligible to vote-----	143
Total number of ballots cast-----	133
Ballots cast for Cutlery Workers Local Union No. 20452-----	105
Ballots cast against Cutlery Workers Local Union No 20452-----	28

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 CERTIFIED that Cutlery Workers Local Union No. 20452 has been designated and selected by a majority of the production and maintenance employees of The Ontario Knife Company, Franklinville, New York, excluding foremen and other supervisory employees, as their representative for the purposes of collective bargaining, and that, pursuant to the provisions of Section 9 (a) of the National Labor Relations Act, Cutlery Workers Local Union No. 20452 is the exclusive representative of all such employees for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

CHAIRMAN MADDEN took no part in the consideration of the above Decision, Direction of Election, and Certification of Representatives.