

In the Matter of THE OSGOOD COMPANY and INTERNATIONAL
ASSOCIATION OF MACHINISTS

Case No. R-314.—Decided December 2, 1937

Machinery Manufacturing Industry—Investigation of Representatives: controversy concerning representation of employees: refusal by employer to recognize union as exclusive bargaining agent until certified by Board—*Unit Appropriate for Collective Bargaining:* employees on hourly rate basis; production and maintenance employees; community of interest; no controversy as to—*Representatives:* proof of choice: membership in union—*Certification of Representatives:* upon proof of majority representation.

Mr. Max W. Johnstone, for the Board.

Mr. John J. Murphy, of Cleveland, Ohio, for the Union.

Mr. Herbert Fuchs, of counsel to the Board.

DECISION

AND

CERTIFICATION OF REPRESENTATIVES

STATEMENT OF THE CASE

On June 28, 1937, International Association of Machinists, herein called the Union, filed with the Regional Director for the Eighth Region (Cleveland, Ohio) a petition alleging that a question affecting commerce had arisen concerning the representation of employees of The Osgood Company, Marion, Ohio, 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 September 11, 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.

On September 15, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company and the Union. Pursuant to the notice a hearing was held on September 23, 1937, at Marion, Ohio, before Charles Bayly, the Trial Examiner duly designated by the Board. The Board was represented by counsel and the Union was represented by a Grand Lodge representative. The Board and the Union participated in the hearing. The Company was not represented by counsel at the hearing. Full oppor-

tunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing upon the issues was afforded all parties. No objections to the introduction of evidence and no exceptions to rulings of the Trial Examiner were made at the hearing.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Company is an Ohio corporation with its principal place of business at Marion, Ohio. It is engaged in manufacturing and selling power shovels, excavating machinery, and road rollers, and in jobbing iron and steel castings. The Company's manufacturing plant is located at Marion, Ohio, a branch sales office at Philadelphia, Pennsylvania, and a warehouse and sales office at Ridgfield, New Jersey. The Company ranks among the larger concerns in the industry.

The Company owns no transportation facilities or sources of raw materials. Between 50 and 75 per cent of its raw materials come to the plant by rail and truck lines from points outside Ohio, notably from Illinois, Wisconsin, Pennsylvania, and California.

Distributors and commission agents sell the Company's products in several states, including California, New Mexico, Colorado, Missouri, New York, Pennsylvania, Alabama, Georgia, Michigan, West Virginia, Indiana, and Nebraska. In 1936, the Company's sales totalled about \$1,500,000. Between 85 and 90 per cent of its sales are made to customers outside the State of Ohio. The Company usually sends an instructor to deliver and put into operation a machine that has been sold.

The products of the Company are used in a number of industries, including coal mining, contracting, highway construction, and earthworks. The attorney for the Board introduced in evidence a stipulation signed by the president and the secretary of the Company wherein the Company admits that it is engaged in interstate commerce.

II. THE UNION

International Association of Machinists, Local No. 1281, is a labor organization. It was formed among the production and maintenance employees of the Company's plant on April 29, 1937, and is affiliated with the American Federation of Labor. No other labor organization exists at the Company's plant.

III. THE QUESTION CONCERNING REPRESENTATION

On June 10, 1937, the Union sought recognition by the Company. Negotiations have been under way since that time but the Company

refuses to recognize the Union as exclusive bargaining agent unless and until the Union is certified as such by formal order of the Board. We find that a question has arisen concerning the representation of employees of the 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 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 Union contends that all hourly rate employees at the Company's Marion plant, exclusive of employees in the main office, the foundries, and the filling station, constitute an appropriate unit for collective bargaining. These employees form the production and maintenance crews. They have a common interest in rates of wages and working conditions, and comprise an integrated group within the plant. In the stipulation introduced in evidence by the Board's attorney the Company admits the appropriateness of the proposed unit.

We find that the employees of the Company at its Marion plant, paid upon an hourly basis, excluding employees of the main office, the foundries, and the filling station, constitute a unit appropriate for the purposes of collective bargaining and that said unit will insure to employees of the 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

The bargaining unit above determined includes 211 employees. The president of the Union, testifying from its membership records, stated that the Union has 159 members and that all of its members are employees of the Company in the unit found appropriate above. The Trial Examiner permitted the withdrawal of the membership records and the substitution in evidence of a typewritten list of the names of union members. The list in evidence¹ contains 161 names. Nothing in the record raises a doubt as to the clear membership majority established by the evidence introduced on behalf of the Union.

¹ Board's Exhibit No. 8.

We find that the Union has been designated and selected by a majority of the employees in the appropriate unit as their representative for the purpose of collective bargaining. It is, therefore, the exclusive representative of all the employees in such unit for the purposes of collective bargaining, and we will so certify.

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 Osgood Company, Marion, Ohio, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

2. The employees of The Osgood Company at its Marion, Ohio, plant who are paid by the hour, excluding employees of the main office, the foundries, and the filling station, constitute a unit appropriate for the purposes of collective bargaining, within the meaning of Section 9 (b) of the National Labor Relations Act.

3. International Association of Machinists, Local No. 1281, is the exclusive representative of all the employees in such unit for the purpose of collective bargaining, within the meaning of Section 9 (a) of the National Labor Relations Act.

CERTIFICATION OF REPRESENTATIVES

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 CERTIFIED that International Association of Machinists, Local No. 1281, has been designated and selected by a majority of the employees of The Osgood Company, Marion, Ohio, at its Marion plant, who are paid by the hour excluding employees of the main office, the foundries, and the filling station, as their representative for the purposes of collective bargaining and that, pursuant to the provisions of Section 9 (a) of the Act, International Association of Machinists, Local No. 1281, 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.