

In the Matter of THE PERRY-FAY COMPANY and LODGE 1282, INTERNATIONAL ASSOCIATION OF MACHINISTS

*Case No. R-393.—Decided December 16, 1937*

*Screw Manufacturing Company—Investigation of Representatives: controversy concerning representation of employees: refusal by employer to recognize petitioning union as exclusive representative—Unit Appropriate for Collective Bargaining: production and maintenance employees—Election Ordered—Certification of Representatives*

*Mr. Harry L. Lodish and Mr. Peter Di Leone, for the Board.*

*Mr. Glen O. Smith, of Cleveland, O., and Mr. King Fawver, of Elyria, O., for the Company.*

*Mr. Harry Selekman, of counsel to the Board.*

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

On September 21, 1937, International Association of Machinists, Lodge 1282, 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 Perry-Fay Company, Elyria, 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 October 4, 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 November 10, 1937, the Regional Director issued a notice of hearing, copies of which were duly served upon the Company and upon the Union. Pursuant to this notice, a hearing was held on November 22, 1937, at Elyria, Ohio, before Paul K. Hennessy, the Trial Examiner duly designated by the Board. The Board and the Company were represented by counsel. Full opportunity to be heard,

to examine and to cross-examine witnesses, and to introduce evidence bearing on the issues was afforded all parties. During the course of the hearing the Trial Examiner made several rulings on motions and on objections to the admission of evidence. The Board has reviewed the rulings of the Trial Examiner 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 Company is a corporation organized under the laws of the State of Ohio. It manufactures screw machine products, made by special order to the customer's specifications, and no further service is rendered to the customer after the product is sold. All its plants, dealers and warehouses are located in Elyria, Ohio.

The principal raw material used is cold rolled steel, approximately 60 per cent of which comes equally from New York and Pennsylvania. The volume of finished products shipped outside of Ohio is approximately 60 per cent.

Purchases of materials during 1936 amounted to approximately \$800,000. The total volume of sales for the same period was approximately \$1,250,000.00.

#### II. THE ORGANIZATION INVOLVED

International Association of Machinists, Lodge No. 1282, is a labor organization chartered by the American Federation of Labor, admitting to its membership all production and maintenance employees of the Company, excluding clerical and supervisory employees.

#### III. THE QUESTION CONCERNING REPRESENTATION

The recording secretary of the Union testified that of the 350 employees of the Company, 202 had signed cards authorizing the Union to act as their agent for collective bargaining purposes.

On July 16, 1937, representatives from the Union met with officers of the Company and requested that the Company sign an agreement submitted by the Union<sup>1</sup> and recognize it as the exclusive bargaining agency. Action on this request was postponed until August 13, 1937, when the President of the Company gave to the committee a statement of the policy of the Company which denied to the Union recognition as the exclusive representative of its em-

<sup>1</sup> Board's Exhibit No. 2.

ployees for collective bargaining purposes.<sup>2</sup> This declaration of policy was mailed to all employees of the Company.

We find, therefore, that a question has arisen concerning 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 in its petition for an investigation and certification seeks to represent the production and maintenance employees, excluding clerical and supervisory workers. The Company raised no objection to this unit.

We find that the production and maintenance employees of the Company, excluding clerical and supervisory employees, 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 REPRESENTATION

We find that the question which has arisen concerning the representation of employees can best be resolved by the holding of an election by secret ballot to determine whether the employees wish the Union to represent them. Those employees in the appropriate unit who were on the pay roll of the Company during the pay-roll period next preceding the filing of the petition in this case shall be eligible to vote.

Upon the basis of the above findings of fact and upon the entire record in the case, the Board make the following:

#### CONCLUSIONS OF LAW

1. A question affecting commerce has arisen concerning the representation of employees of The Perry-Fay Company, Elyria, Ohio, within the meaning of Section 9 (c) and Section 2 (6) and (7) of the National Labor Relations Act.

<sup>2</sup> Board's Exhibit No. 4.

2. The production and maintenance employees of the Company, excluding clerical and supervisory employees, constitute a unit appropriate for the purpose 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 Perry-Fay Company, Elyria, Ohio, an election by secret ballot shall be conducted within 10 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, Section 9, of said Rules and Regulations—Series 1, as amended, among the production and maintenance employees of The Perry-Fay Company, who were employed by the Company during the pay-roll period immediately preceding September 21, 1937, excluding clerical and supervisory employees and those who quit or were discharged for cause between such date and the date of election, to determine whether they desire to be represented by Lodge 1282, International Association of Machinists, for the purposes of collective bargaining.

[SAME TITLE]

### AMENDMENT TO DIRECTION OF ELECTION

*December 23, 1937*

On December 16, 1937, the National Labor Relations Board, herein called the Board, issued a Decision and Direction of Election in the above entitled proceeding, the election to be held within ten (10) days from the date of the Direction, under the direction and supervision of the Regional Director for the Eighth Region, (Cleveland, Ohio). The Board, having been advised by said Regional Director that a longer period within which to hold the election is necessary, hereby amends the Direction of Election issued on December 16, 1937, by striking therefrom the words "within 10 days from the date of this Direction" and substituting therefor the words "within forty (40) days from the date of this Direction".

MR. DONALD WAKEFIELD SMITH took no part in the consideration of the above Amendment to Direction of Election.

[SAME TITLE]

## CERTIFICATION OF REPRESENTATIVES

*January 26, 1938*

On September 21, 1937, International Association of Machinists, Lodge 1282, 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 Perry-Fay Company, Elyria, 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. Pursuant to notice duly served upon the Company and upon the Union, a hearing was held at Elyria, Ohio, on November 22, 1937, before Paul K. Hennesy, the Trial Examiner duly designated by the National Labor Relations Board, herein called the Board.

On December 16, 1937, the Board issued a Decision and Direction of Election. The Direction of Election provided that an election by secret ballot be held within ten (10) days from the date of the Direction among the production and maintenance employees who were employed by the Company during the pay-roll period immediately preceding September 17, 1937, excluding clerical and supervisory employees and those who quit or were discharged for cause between such date and the date of election, to determine whether or not they desired to be represented by the Union for the purposes of collective bargaining. On December 23, 1937, the Board issued an Amendment to the Direction of Election, which struck from the Direction the words "within 10 days from the date of this Direction" and substituted therefor the words "within forty (40) days from the date of this Direction."

Pursuant to the Direction, as amended, an election by secret ballot was conducted on January 13, 1938. Full opportunity was accorded to all of 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 National Labor Relations Board Rules and Regulations—Series 1, 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 balloting and its results the Regional Director reported as follows:

Total number of employees eligible.....	332
Total number of ballots counted.....	244
Total number of votes for International Association of Machinists, Lodge 1282.....	150

Total number of votes against International Association of Machinists, Lodge 1282.....	88
Total number of blank ballots.....	3
Total number of void ballots.....	1
Total number of challenged ballots.....	2

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, Lodge 1282, has been designated and selected by a majority of the production and maintenance employees of The Perry-Fay Company, Elyria, Ohio, excluding clerical and supervisory employees, as their representative for the purposes of collective bargaining, and that, pursuant to Section 9 (a) of the National Labor Relations Act, International Association of Machinists, Lodge 1282, 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.