

In the Matter of THE SYMINGTON-GOULD CORPORATION and PATTERN
MAKERS ASSOCIATION OF BUFFALO

Case No. 3-R-635.—Decided November 11, 1943

Mr. Peter J. Crotty, for the Board.

Mr. W. G. Woodams, and *Mr. Estes M. Kimbrough*, of Depew,
N. Y., for the Company.

Mr. C. D. Madigan, of Cleveland, Ohio, for the Patter Makers.

Mr. John M. Fanning, of Buffalo, N. Y., for the U. S. A.

Miss Melvern R. Krelow, of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Pattern Makers Association of Buffalo, herein called the Pattern Makers, alleging that a question affecting commerce had arisen concerning the representation of employees of The Symington-Gould Corporation, Depew, New York, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before M. S. Ryder, Trial Examiner. Said hearing was held at Buffalo, New York, on September 14, 1943. The Company, the Pattern Makers, and Local #1630, United Steelworkers of America, C. I. O., herein called the U. S. A., appeared, participated, and 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. During the hearing, the U. S. A. moved to dismiss the petition. The Trial Examiner reserved ruling. For reasons hereinafter stated, the motion is hereby denied. All parties were afforded opportunity to file briefs with the Board.

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

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FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

The Symington-Gould Corporation is a Maryland corporation, authorized to do business in the State of New York, where it is engaged at Depew, New York, in the manufacture of steel castings. The Depew plant is the only plant here involved. During the period from January 1, 1943, to June 30, 1943, the Company used at said plant raw materials valued in excess of \$500,000, of which approximately 50 percent was shipped to the plant from points outside the State of New York. During the same period, the Company manufactured at said plant finished products valued in excess of \$500,000, of which approximately 50 percent was shipped from the plant to points outside the State of New York. The Company admits, for the purpose of this proceeding only, that it is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Pattern Makers Association of Buffalo is a labor organization affiliated with Pattern Makers' League of North America, A. F. of L., admitting to membership employees of the Company.

Local #1630, United Steelworkers of America is a labor organization affiliated with the Congress of Industrial Organizations, admitting to membership employees of the Company.

III. THE QUESTION CONCERNING REPRESENTATION

On April 27, 1943, the Pattern Makers addressed a letter to the Company requesting that on and after May 15, 1943, the rate for journeymen pattern makers be set at \$1.50 per hour minimum. On May 3, 1943, the Company replied to the effect that it could not recognize any claim presented by the Pattern Makers inasmuch as the Company was then under contract with the U. S. A. covering a bargaining unit including pattern makers.

The Company and the U. S. A. have been under contract since 1937. The last contract, effective as of July 28, 1941, was to remain in effect until August 1, 1943. The Company and the U. S. A. are presently negotiating a new contract, and the Company, at the hearing, stated that the parties are observing the terms of the last contract until the new contract goes into effect. Since the contract of July 28, 1941, has expired, neither it nor the subsequent oral agreement to extend its terms constitutes a bar to a present determination of representatives.

A statement of a Field Examiner of the Board, introduced in evi-

dence at the hearing, indicates that the Pattern Makers represents a substantial number of employees in the unit it claims to be 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 DETERMINATION OF REPRESENTATIVES

The Pattern Makers contends that all wood and metal journeymen patternmakers and apprentice patternmakers employed by the Company at its Depew, New York, plant, constitute an appropriate unit. The U. S. A. opposes the separation of these employees from a plant-wide unit of production and maintenance employees, including pattern makers, which it claims to be appropriate.

The record indicates that in 1937 an election under the supervision of the Company was conducted among all the employees to determine whether or not the employees desired representation by the U. S. A. Although the Pattern Makers was not designated on the ballot, the Company kept the ballots cast by the employees of the pattern shop separate from the remainder of the ballots. The U. S. A. was chosen as the bargaining representative. Although all employees, as a condition to their future and continued employment by the Company, were required to become members of the U. S. A. and to maintain their status as members during such employment, the 1941 contract between the Company and the U. S. A. contained the following section:

All present employees will be given until August 31, 1943, to obtain Union membership, *except that Patternmakers presently or hereafter employed who are bona fide members in good standing of the established Patternmakers Union are exempt from the requirement to become members of the contracting Union.* Such exempt Patternmakers must establish their right to this exemption to the Corporation and to the contracting Union.²

A further indication that the pattern makers were accorded special recognition apart from the other production and maintenance employees appears from the fact that in March of this year, the Grievance Committee of the U. S. A., and a subcommittee of the pattern shop employees met with the Company and requested an increase solely for the pattern makers. Subsequently, the matter was presented to the War Labor Board, and pursuant to a directive of that Board,

¹The Field Examiner reported that the Pattern Makers submitted 16 designations, all bearing apparently genuine signatures, 15 of which, 1 dated in December 1933, 1 in December 1942, 5 in April 1943, and 8 in June 1943, are the names of persons whose names appear on the Company's pay roll of July 17, 1943. Said pay roll contains the names of 26 employees on the proposed unit.

²Italics supplied.

increased pay rates for the pattern makers were put into effect by the Company.

The pattern makers work in a separate building apart from the other production and maintenance employees. They are a well established and highly skilled craft, requiring lengthy apprenticeship. Although the pattern makers have been bargained for as part of an industrial unit, it appears, as set forth above, that the Company and the U. S. A. have in effect continued to recognize that the pattern makers constitute a group separate and apart from the other production and maintenance employees. Under these circumstances, we find that the pattern makers may properly constitute a separate unit or may continue to function as part of the plant-wide industrial unit. We are of the opinion, however, that our determination of the appropriate unit with regard to the pattern makers should depend in part upon the desires of the pattern makers themselves. We shall therefore make no final determination of the unit at this time, but shall direct that an election by secret ballot shall be held among all wood and metal journeymen pattern makers and apprentice pattern makers of the Company at its Depew, New York, plant, excluding all supervisory employees with the authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, to determine whether they desire to be represented by the Pattern Makers, or by the U. S. A., or by neither.

Those eligible to vote shall be the employees in the enumerated categories, 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. Upon the results of the election will depend, in part, our determination as to whether they will constitute a separate unit or will remain a part of the industrial unit.

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 2, as amended, it is hereby

DIRECTED that, as part of the investigation to ascertain representatives for the purposes of collective bargaining with The Symington-Gould Corporation, Depew, New York, 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 Third 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 following employees who were employed by the Company during the pay-roll period immediately preceding the date of this Direction of Election, including employees who did not work during 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: all wood and metal journeymen pattern makers and apprentice pattern makers of the Company, at its Depew, New York, plant, excluding all supervisory employees with the authority to hire, promote, discharge, discipline, or otherwise effect changes in the status of employees, or effectively recommend such action, to determine whether they desire to be represented by Pattern Makers Association of Buffalo, or by Local #1630, United Steelworkers of America, C. I. O., for the purposes of collective bargaining, or by neither.