

In the Matter of CRAMP SHIPBUILDING COMPANY and PATTERN MAKERS LEAGUE OF NORTH AMERICA, PHILADELPHIA ASSOCIATION (AFL)

Case No. 4-R-1111.—Decided November 19, 1943

Mr. Neal Ellis, of Philadelphia, Pa., for the Company.

Mr. Lewis H. Wilderman and *Mr. Morris May*, of Philadelphia, Pa., for the P. M. L.

Mr. M. H. Goldstein, of Philadelphia, Pa., for the C. I. O.

Mr. William C. Baisinger, Jr., of counsel to the Board.

DECISION

AND

DIRECTION OF ELECTION

STATEMENT OF THE CASE

Upon petition duly filed by Pattern Makers League of North America, Philadelphia Association (AFL), herein called the P. M. L., alleging that a question affecting commerce had arisen concerning the representation of employees of Cramp Shipbuilding Company, Philadelphia, Pennsylvania, herein called the Company, the National Labor Relations Board provided for an appropriate hearing upon due notice before David Karasick, Trial Examiner. Said hearing was held on August 25, 1943, and on September 13, 1943, at Philadelphia, Pennsylvania. The Company, the P. M. L., and Local No. 42, Industrial Union of Marine & Shipbuilding Workers of America, CIO, herein called the C. I. O., appeared, participated, and were afforded full opportunity to be heard, to examine and cross-examine witnesses, and to introduce evidence bearing on the issues. At the hearing, the C. I. O. moved to dismiss the petition of the P. M. L. on the grounds that (1) the contract between the C. I. O. and the Company together with written extension thereof, constitutes a bar to the present proceeding; (2) the bargaining unit sought by the P. M. L. is not appropriate for the purposes of collective bargaining; (3) the P. M. L. had knowledge of and acquiesced in a prior representation proceeding involving the Company in which the claim of the P. M. L. to represent employees of the Company was adjudicated, and said organization is therefore estopped from asserting its claim in the instant case. The Trial Examiner reserved ruling on this motion for the Board. For

reasons stated in Section III and IV *infra*, the motion is hereby denied. The Trial Examiner's rulings made at the hearing are free from prejudicial error and are hereby affirmed. All parties were afforded an opportunity to file briefs with the Board.

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

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANY

Cramp Shipbuilding Company is a Pennsylvania corporation, having its principal office and place of business in Philadelphia, Pennsylvania. It is engaged in the construction of naval vessels for the United States Navy and the repair of cargo ships for the United States Maritime Commission. A substantial percentage, valued in excess of \$50,000 during 1941, of the raw materials and supplies used by the Company is shipped to the Company from States other than Pennsylvania. The construction and repair work performed by the Company during 1941 was valued in excess of \$50,000.¹ We find that the Company is engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Pattern Makers League of North America, Philadelphia Association, is a labor organization affiliated with the American Federation of Labor, admitting to membership employees of the Company.

Local No. 42, Industrial Union of Marine & Shipbuilding Workers 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 June 11, 1941, American Federation of Labor filed a petition by which it sought to establish an industrial unit comprised of employees of the Company. The C. I. O. intervened in the proceeding, and hearings were held on September 11 and October 31, 1941. On November 29, 1941, the Board issued a Decision and Direction of Election in the case,² in which it found that all production and maintenance employees of the Company, with certain specified exclusions not pertinent herein, constituted an appropriate bargaining unit. Pursuant

¹The above stated facts concerning the business of the Company are set forth in *Matter of Cramp Shipbuilding Company*, 37 N. L. R. B. 146. In the cited case, the Company did not contest the jurisdiction of the Board. The parties stipulated at the hearing that the current organization and operations of the Company are substantially the same as set forth in the cited decision. The Company declined to reveal the total complement of employees at its plant but admitted that it exceeds 10,000 persons.

²*Matter of Cramp Shipbuilding Company*, 37 N. L. R. B. 146.

to the aforesaid Decision and Direction of Election, an election by secret ballot was held on December 5, 1941, the results of which showed that the C. I. O. had received a majority of the valid votes cast. The P. M. L. did not participate in the election. However, prior to the decision, but subsequent to the hearings, the P. M. L. notified the Board that it had not received notice of the proceeding and requested the exclusion of pattern makers from the appropriate bargaining unit. On December 23, 1941, the Board issued a Supplemental Decision and Certification of Representatives in which it certified the C. I. O. as the exclusive bargaining representative of the employees involved but made the following statement with respect to the request of the P. M. L.:

Without making any determination at this time as to whether the Pattern Makers League had due notice of the proceeding; and also without making any determination as to whether the pattern makers constitute a separate appropriate unit, we shall certify the Industrial Union as exclusive bargaining representative within the unit found to be appropriate in the Decision and Direction of Election; without prejudice, however, to the right of the Pattern Makers League of North America to file a petition requesting separate representation for the pattern makers.

On January 22, 1942, and on November 12, 1942, respectively, the P. M. L. filed with the Board petitions for investigation and certification of representatives of the Company's pattern makers and pattern maker apprentices. Both petitions were dismissed without a hearing. Since each of these petitions was dismissed administratively, the right of the P. M. L. to petition for a separate unit of pattern makers has not been adjudicated. Accordingly, we conclude that the prior decision does not act as an estoppel to the assertion by the P. M. L. of its claim in the instant case.

On April 9, 1943, and again on April 12, 1943, the P. M. L. requested the Company to recognize it as the exclusive bargaining representative of the Company's pattern makers and pattern maker apprentices. The Company refused to accord the P. M. L. such recognition on the ground that the C. I. O. was the certified bargaining representative of the Company's production and maintenance employees including pattern makers and pattern maker apprentices. Thereafter, on April 19, 1943, the P. M. L. filed the petition in the instant proceeding.

A statement prepared by the Regional Director and introduced in evidence at the hearing supplemented by a statement made by the Trial Examiner at the hearing, plus certain documents introduced into evidence, indicate that the P. M. L. and the C. I. O. each repre-

sents a substantial number of employees within the unit alleged by the P. M. L. to be appropriate.³

The C. I. O. contends that its bargaining agreement with the Company is a bar to this proceeding. This contract was executed on June 30, 1942, and covered the employees within the production and maintenance unit for which the C. I. O. had been certified in the prior representation proceeding, herein referred to as Case No. R-2993. It was to remain in effect until June 23, 1943, and from year to year thereafter in the absence of written notice by either party of a desire to change or amend the provisions thereof, served upon the other party 30 days prior to any anniversary date of the contract. Pattern makers and pattern maker apprentices were not specifically mentioned in the contract as either included or excluded from the bargaining unit, however, the contract did establish wage rates for pattern makers, and the C. I. O. has represented pattern makers in the presentation of grievances to the Company. Also on or about September 19, 1943, the C. I. O. obtained the discharge of two pattern makers under the maintenance of membership clause contained in the contract. Sometime in April or May 1943, the Company and the C. I. O. began negotiations looking toward a new contract. These negotiations have not yet been consummated since the issues were certified to the National War Labor Board on or about June 23, 1943, and no decision has been rendered by that body. Excerpts from the minutes of a meeting attended by the Company and the C. I. O. before a mediator and the Commissioner of Conciliation of the State of Pennsylvania held on June 18, 1943, show that the Company and the C. I. O. agreed upon the following:

The present agreement between the parties shall continue in full force and effect until the execution of a new agreement is reached between the parties by collective bargaining and or pursuant to the directive order of the National War Labor

³ As reflected by a report of the Regional Director supplemented by the Trial Examiner's statement, the P. M. L. and the C. I. O. each submitted certain written evidence in support of its claim of representation. This evidence consists of affidavits of membership in good standing and authorization cards and is summarized in the table below. The names appearing on said affidavits and cards were compared with the Company's pay roll of August 23, 1943, which contains the names of 12 pattern makers and 3 pattern maker apprentices.

Tabulation of evidence

Total employees in alleged unit.....	15
Showing by P. M. L.	11
Showing by C. I. O.	13
Duplicates	9

At the hearing, the C. I. O. introduced documents signed in November 1942, by 13 pattern makers and 4 pattern maker apprentices each of which authorized the C. I. O. to represent the signer in the presentation of grievances. The P. M. L. in turn introduced a document signed on August 18, 1943, by 9 pattern makers, which in substance constitutes a revocation of representation by the C. I. O.

Board. * * * Any agreements reached by the parties * * * shall be effective as of June 23, 1943, unless the National War Labor Board shall order otherwise.

The C. I. O. argues that although this agreement appears to be for an indefinite period of time, it is the understanding of the parties that any new contract entered into as a result of the proceedings before the National War Labor Board will remain in effect until June 23, 1944. It therefore, contends that the contract which expired June 23, 1943, coupled with the agreement for indefinite extension, which is in writing, and the understanding of the parties with respect to the term of any contract which they may presently enter into, constitutes a bar to the present proceeding. We cannot agree with this contention. As previously stated, the P. M. L. first requested recognition as representative of the Company's pattern makers on April 9, 1943, and filed its petition herein on April 19, 1943, over 1 month prior to the automatic renewal date of the original contract between the Company and the C. I. O. We have consistently held that a contract entered into or renewed after notice has been given to the employer of the claim of a rival organization, does not constitute a bar to a determination of representatives.⁴ Accordingly, since the P. M. L. notified the Company of its claim to represent a majority of the pattern makers prior to the renewal date of the original contract between the C. I. O. and the Company, we find that the contract is not a bar to an immediate determination of representatives.

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 P. M. L. contends that the pattern makers and pattern maker apprentices employed by the Company, excluding foremen, quartermen, and leading men comprise an appropriate bargaining unit. The C. I. O. contends that the appropriate unit consists of all employees of the Company included in the Board's certification in Case No. R-2993 including pattern makers and pattern maker apprentices. The Company takes no position with respect to the appropriate unit.

The Company operates on a departmental basis. The pattern shop is on the second floor of the building which houses department 407. This department employs approximately 500 employees. Pattern makers, pattern maker apprentices, a cabinet maker, a shipwright

⁴ *Matter of Corcoran Metal Products Corporation*, 45 N. L. R. B. 439; *Pressed Steel Car Company*, 41 N. L. R. B. 6.

helper, two maintenance machinemen, and a shop clerk work in the pattern shop. Shipwrights, shipjoiners, and millwrights work on the first floor of department 407. The same foreman, quartermen, and leadingman supervise all the employees in the pattern shop. All employees in department 407, including the pattern makers, use the time clocks located on the first floor. Other conditions of employment are common to all employees in department 407.

The C. I. O. contends that should the Board conclude that the Company's pattern makers may properly function as a part of a bargaining unit separate and apart from the plant-wide unit desired by the C. I. O., such a unit must logically be based on the functional and administrative set-up of the Company. This alternative unit as proposed by the C. I. O. would include all employees in the pattern shop or in other words all employees who work on the second floor of department 407.

It is true that many of the conditions of employment are common to both the pattern makers and other production employees of the Company. However, the pattern makers and pattern maker apprentices work on the second floor of the building which houses department 407, while the majority of the remaining employees in department 407 work on the first floor. The five employees assigned to the pattern shop who are not pattern makers or pattern maker apprentices perform no pattern making functions. The majority of the employees on the first floor of department 407 work on ships under construction in the shipyard. On the other hand, all of the work performed by the pattern makers and pattern maker apprentices is confined almost exclusively to the pattern shop itself. Occasionally one pattern maker may be called upon to perform a task in the shipyard which requires his special skill. It is well established that pattern makers constitute a highly skilled craft and other craftsmen cannot successfully duplicate their operations. Furthermore, as a labor organization, the P. M. L. has rigidly adhered to its traditional craft lines. It admits to membership and represents only those employees who have met the qualifications and strict apprenticeship standards of the trade. While we are cognizant of the fact that the building and repairing of ships is a highly integrated enterprise in which pattern makers perform an essential role, we are of the opinion that the facts presented in the instant case indicate that the Company's pattern makers and pattern maker apprentices can function efficiently as a separate bargaining unit equally as well as they can as part of a plant-wide production and maintenance unit.⁵ We conclude, therefore, that the factors are sufficiently balanced to permit our determination of the

⁵ See *Matter of Bethlehem Steel Company (Shipbuilding Division)*, 40 N. L. R. B. 922; *Matter of Bendix Aviation Corporation*, 39 N. L. R. B. 81.

appropriate unit to be based, at least in part, upon the desire of the employees involved to be expressed in the election which we hereinafter direct.

As a final ground for dismissal of the P. M. L.'s petition, the C. I. O. contends that the P. M. L. is estopped from asserting its claim in the instant case because it had due notice of and acquiesced in the prior representation proceeding (Case No. R-2993) and the subsequent bargaining on an industrial basis. The petition in Case No. R-2993 was filed on June 11, 1941, by the Metal Trades Council of the American Federation of Labor in the name of the American Federation of Labor and the petitioner appeared on the ballot in the election of December 5, 1941, as "American Federation of Labor, Metal Trades Council." At the time the petition was filed in that case, the P. M. L. was a member of the Metal Trades Council, herein called the M. T. C.; in fact, James Huddy, the business manager of the P. M. L., was also the president of the M. T. C. Excerpts from the minutes of the meetings held by the P. M. L., which were introduced into evidence at the hearing, indicate that on November 7, 1941, at a regular meeting of the P. M. L., a motion was made and seconded to withdraw from the M. T. C. Furthermore at a meeting, held on November 21, 1941, the members present voted to direct the business manager of the P. M. L. to resign as president of the M. T. C. The P. M. L. was formally suspended from the M. T. C. on or about January 1, 1943. From the evidence adduced at the hearing, it is apparent that the P. M. L. had notice of the proceedings in Case No. R-2993. It is significant, however, that no pattern makers or pattern maker apprentices were employed by the Company on June 11, 1941, the date on which the American Federation of Labor filed its petition in the prior case. It also appears that by December 5, 1941, the date of the election, the Company had hired only six pattern makers, and it is questionable whether all six of these employees were yet working as of this date. Four pattern makers were included on the list of eligible voters in the election, and the record contains evidence to the effect that two pattern makers were observed to have cast ballots in the election. In view of the fact that the Company's pattern makers are a skilled craft group which has attempted to maintain its separability from the other production and maintenance employees even in the face of a bargaining contract which compelled them to maintain membership in the C. I. O. or be subject to discharge, we are of the opinion that the P. M. L.'s notice of the proceedings in Case No. R-2993 is immaterial. The Company's pattern makers, through the P. M. L., have been persistent in their efforts to secure separate representation even though their first and second attempts were unsuccessful. Accordingly, we find the above contention of the C. I. O. to be without merit.

We shall make no final determination of the appropriate unit at this time but shall direct that the question concerning representation which has arisen be resolved by means of an election by secret ballot among the pattern makers and pattern maker apprentices who were employed by the Company during the pay roll period immediately preceding the date of the Direction of Election herein, excluding foremen, quartermen, and leading men, subject to the limitations and additions set forth in the Direction.

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 Cramp Shipbuilding Company, Philadelphia, Pennsylvania, 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 Fourth 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 Company's pattern makers and pattern maker apprentices, who were employed during the pay-roll period immediately preceding the date of this Direction, 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 foremen, quartermen, leading men, and 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, to determine whether they desire to be represented by Pattern Makers League of North America, Philadelphia Association (AFL), or Local No. 42, Industrial Union of Marine & Shipbuilding Workers of America, C. I. O., for the purposes of collective bargaining, or by neither.