

In the Matter of BETHLEHEM STEEL COMPANY, SHIPBUILDING DIVISION, SAN FRANCISCO YARD *and* PATTERN MAKERS ASSOCIATION OF SAN FRANCISCO, AFFILIATED WITH PATTERN MAKERS LEAGUE OF NORTH AMERICA, A. F. L.

In the Matter of MOORE DRY DOCK COMPANY *and* PATTERN MAKERS ASSOCIATION OF SAN FRANCISCO, AFFILIATED WITH PATTERN MAKERS LEAGUE OF NORTH AMERICA, A. F. L.

Cases Nos. 20-R-796 and 20-R-797 respectively.—Decided March 31, 1944

Brobeck, Phleger & Harrison, by Mr. Gregory A. Harrison, of San Francisco, Calif., for the Steel Company and for the Dry Dock Company.

Mr. David Sokol, of Los Angeles, Calif., and Mr. Walter I. Milestone, of San Francisco, Calif., for the Pattern Makers League.

Mr. Charles J. Janigian, of San Francisco, Calif., for the Council.

Mr. David V. Easton, of counsel to the Board.

DECISION

AND

ORDER

STATEMENT OF THE CASE

Upon separate petitions duly filed by Pattern Makers Association of San Francisco, affiliated with the Pattern Makers League of North America, A. F. L., herein called the Pattern Makers League, alleging that questions affecting commerce had arisen concerning the representation of employees of Bethlehem Steel Company, Shipbuilding Division, San Francisco Yard, San Francisco, California, herein called the Steel Company, and Moore Dry Dock Company, Oakland, California, herein called the Dry Dock Company, the National Labor Relations Board provided for appropriate hearings upon due note before John Paul Jennings, Trial Examiner. Said hearings were held at San Francisco, California, on November 18 and 19, 1943. The Companies, the Pattern Makers League, and Bay Cities Metal Trades Council, affiliated with the Metal Trades Department of the American Federation of Labor, herein called the Council, appeared, participated,

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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 hearings are free from prejudicial error and are hereby affirmed. All parties were afforded an opportunity to file briefs with the Board. The request of the Pattern Makers League for oral argument is hereby denied.

The Board hereby consolidates the afore-mentioned proceedings, and upon the entire consolidated record makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF THE COMPANIES

Bethlehem Steel Company, Shipbuilding Division, a wholly-owned subsidiary of Bethlehem Steel Corporation, is a Pennsylvania corporation engaged in the operation and maintenance of a ship construction and repair plant located at San Francisco, California, known as the "San Francisco Yard." We are concerned herein with the Steel Company's operation of this yard. In the course of its operations of the San Francisco Yard the Steel Company purchases supplies and materials valued in excess of \$1,000,000 per year, of which at least 10 percent is purchased from points located outside the State of California. During the calendar year 1942, the gross income of the Steel Company from its operation of the San Francisco Yard exceeded \$1,000,000, more than 90 percent of which was in payment of work performed on vessels owned privately or by United States Government agencies, and employed in interstate and foreign commerce.

Moore Dry Dock Company, a California corporation with its principal offices and place of business located in Oakland, California, is engaged in the construction and repair of ocean going vessels and also in steel fabrication work. During the past year, the Dry Dock Company purchased raw materials valued at approximately \$35,000,000 for use at its Oakland operations, 85 percent of which was received from points located outside the State of California. During the same period, the Dry Dock Company constructed ships having an approximate dollar value of \$80,000,000, all of which were delivered to instrumentalities of the United States Government, and are destined for use in interstate and foreign commerce in connection with the national war effort.

The companies admit that they are engaged in commerce within the meaning of the National Labor Relations Act.

II. THE ORGANIZATIONS INVOLVED

Pattern Makers Association of San Francisco, affiliated with the Pattern Makers League of North America, is a labor organization af-

affiliated with the American Federation of Labor, admitting to membership employees of the Company.

Bay Cities Metal Trades Council, affiliated with the Metal Trades Department of the American Federation of Labor, is a labor organization composed of several international unions, including the Pattern Makers League, affiliated with the American Federation of Labor, admitting to membership employees of the Company.

III. THE ALLEGED QUESTION CONCERNING REPRESENTATION

On April 23, 1941, the Dry Dock Company, together with several other Pacific Coast shipbuilding concerns, executed a collective bargaining agreement with the Council and several of its members, including the Pattern Makers League, covering all its production and maintenance employees.¹ A similar agreement was executed on June 25, 1941, between the Steel Company and the Council, as the representative of its member organizations. Both agreements are to last for a 2-year term, or for the duration of the national emergency, whichever is the longer, and both cover all conditions of employment of the production and maintenance employees of the companies with the exception that wages of pattern makers and molders are left to individual negotiations between the companies and the labor organizations representing these classifications of employees. The agreements further provide that employer-employee disputes are first to be taken up by the employer with the representative of the specific member of the Council representing the employees involved, and, in the event the dispute is not settled at this stage, the Council will then attempt to adjust the matters;² and that jurisdictional disputes between members of the Council are to be settled by the Council in accordance with the practices of the American Federation of Labor.

On March 1, 1943, the Pattern Makers League addressed letters to both the Steel Company and the Dry Dock Company seeking recognition as the representative of the employees of each engaged as pattern makers and pattern makers' apprentices. Both companies refused to grant such recognition, contending that they had agreed to negotiate with the Council as spokesman of its member organizations, said agreement being evidenced by the contracts of April and June 1941.³

¹ More specifically, this agreement was the master agreement between Pacific Coast shipbuilders and the Metal Trades Department of the American Federation of Labor, the Pacific Coast District Metal Trades Council, local metal trade councils of which the Council herein was one, and affiliated international unions.

² The contracts describe further procedures in the event no settlement is reached between the Council and the employer.

³ Neither company contends that the contracts constitute a bar to a present determination of representatives (See *Matter of Frazer Company of America*, 51 N. L. R. B. 1106, wherein the Board found that a contract in effect for the duration of the national emergency does not constitute a bar to an election. See also *Matter of Basic Magnesium, Incorporated*, 55 N. L. R. B. 380).

The Council, while not disputing the fact that the Pattern Makers League represents the pattern makers at both plants, contends that the Pattern Makers League had authorized it to conduct all bargaining negotiations on its behalf. The Pattern Makers League, however, contends that it never authorized the Council to act for it in the conduct of negotiations leading to either the April or the June agreements, and that its representative who signed the April agreement had not been authorized to do so.⁴ It argues, therefore, that it is entitled to deal separately with the companies on behalf of the employees whom it seeks to represent in this proceeding.

The issue thus presented resolves itself into a question not of which organization represents the pattern makers, but of which organization has the right to conduct negotiations on behalf of these employees, for, as hereinbefore stated, the Council concedes that the Pattern Makers League represents these employees.⁵ This question was presented to the Board shortly after its inception when it was confronted with a similar situation. The Board stated at that time in the *Aluminum Company* case:⁶

The real question is therefore who represents and speaks for the Alcoa Union and not whether that Union represents a majority of the employees at Alcoa. The Board feels that the question is not for it to decide. Such a question, involving solely and in a peculiar fashion, the internal affairs of the American Federation of Labor and its chartered bodies, can best be decided by the parties themselves.

The foregoing policy was therefore affirmed in subsequent proceedings involving the same issue.⁷ We see no sufficient reason herein to depart

⁴ The record contains evidence indicating that the Pattern Makers League repudiated the signature of its representative which was affixed to the April agreement. It further discloses that the Pattern Makers League at a meeting of its members on April 3, 1941, refused to authorize the Council to act for it in negotiations with the Steel Company, and that at another meeting of its members held on April 17, 1941, it refused to ratify the April contract to which the Dry Dock Company was a signatory. On the other hand, no evidence was adduced which indicates that the Pattern Makers League apprised either the Council or the companies of its failure to authorize the Council to act on its behalf in the negotiations leading to the June 1941 contract, or that it refused to ratify the April 1941 contract. Affirmative evidence was introduced which disclosed that the Pattern Makers League was active in procuring designations among employees of the Steel Company and that such designations were used in ascertaining the majority status of members of the Council in that Company, that the Pattern Makers League participated in all meetings of the Council which led to the execution of both the April 1941 and the June 1941 contracts, as well as in all actions taken by the Council; and that the pattern makers received the benefits of these contracts without formal claim to separate representation until March 1943.

⁵ At the hearing, the Council stated that it did not desire to be placed upon the ballot in the event the Board decided to conduct an election.

⁶ *Matter of Aluminum Company of America*, 1 N. L. R. B. 530, 537.

⁷ *Matter of The Aaton-Fisher Tobacco Co.*, 1 N. L. R. B. 604; *Matter of Standard Oil Company of California*, 1 N. L. R. B. 611; *Matter of Curtis Bay Towing Co.*, 4 N. L. R. B. 360; *Matter of American France Line*, 12 N. L. R. B. 766; *Matter of International Freighters Corporation*, 12 N. L. R. B. 785; *Matter of Weyerhaeuser Timber Company*, 16 N. L. R. B. 902.

from this policy and, accordingly, we find that no question affecting commerce has arisen concerning the representation of employees of the companies within the meaning of Section 9 (c) and Section 2 (6) and (7) of the Act.

ORDER

Upon the basis of the above findings of fact, the National Labor Relations Board hereby orders that the petitions for investigation and certification of representatives of Bethlehem Steel Company, Shipbuilding Division, San Francisco Yard, San Francisco, California, and Moore Dry Dock Company, Oakland, California, filed by Pattern Makers Association of San Francisco, affiliated with the Pattern Makers League of North America, A. F. L., be, and they hereby are, dismissed.

MR. GERARD D. REILLY, dissenting:

This case involves a dispute between two labor organizations affiliated with the American Federation of Labor, the Pattern Makers League of North America and the Bay Cities Metal Trades Council of San Francisco. In April and June 1941, respectively, the companies involved in this proceeding entered into collective bargaining agreements with the Council and several of its constituent union locals, including the Pattern Makers. These purported to cover all production and maintenance employees. The documents in question were signed by officers of all the organizations involved, including the Pattern Makers. The petitioning union now contends that the purported representative who signed these agreements in its behalf had no authority to do so and, therefore, that the union was not a party. The Council contends that it was not apprised of any repudiation by the Pattern Makers of the signer's authority and that the employees in the pattern shop continued to receive benefits resulting from the agreements without making any formal claim to separate representation until March 1943.

The main issue in the case is therefore the resolution of the conflicting evidence regarding the participation of the Pattern Makers in the general contracts. By the order pursuant to the majority opinion, however, the Board has dismissed this proceeding without considering this evidence. This opinion is really tantamount to a determination not to resolve the dispute because of certain considerations expressed in early decisions of this Board declining to take jurisdiction in representation cases where the contending labor organizations were both affiliated with the same parent body.

The doctrine of those cases is somewhat questionable since the Board is charged with the duty under Section 9 (c) of the Act of investigating "the name or names of the representatives that have been desig-

nated or selected" by the employees whenever any question of representation arises. The justification for this policy must therefore rest upon the theory that if one of the contending organizations has no authority under its charter to represent certain classes of employees, the certification of such a union as the bargaining representative might be nullified if the Federation should decide that its petition was *ultra vires*.

This is not the situation in this case, however, since it is conceded that the charter of the Pattern Makers League grants this union the right to admit to membership the employees whom it seeks to represent. In fact, the record indicates that these employees are already members. The real issue then is whether these employees have a right to be represented by the union to which all parties to the controversy concede they have a right to belong, rather than by an association of several unions.

I therefore believe the line of authority upon which the majority decision is predicated is not controlling here and that we should proceed to dispose of this controversy on its merits.